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COMMUNICATION FROM THE COMMISSION TO THE COUNCIL AND THE EUROPEAN PARLIAMENT

establishing a framework programme on Solidarity and the Management of Migration Flows for the period 2007-2013

Proposal for a

DECISION OF THE EUROPEAN PARLIAMENT AND THE COUNCIL

establishing the European Refugee Fund for the period 2008-2013 as part of the General programme 'Solidarity and Management of Migration Flows'

Proposal for a

DECISION OF THE EUROPEAN PARLIAMENT AND THE COUNCIL

establishing the External Borders Fund for the period 2007-2013 as part of the general programme 'Solidarity and Management of Migration Flows'

Proposal for a

COUNCIL DECISION

establishing the European Fund for the Integration of Third-country nationals for the period 2007-2013 as part of the General programme 'Solidarity and Management of Migration Flows'

Proposal for a

DECISION OF THE EUROPEAN PARLIAMENT AND COUNCIL

establishing the European Return Fund for the period 2007-2013 as part of the General programme 'Solidarity and Management of Migration Flows'

(presented by the Commission)

{SEC(2005) 435}

COMMUNICATION FROM THE COMMISSION TO THE COUNCIL AND THE EUROPEAN PARLIAMENT

Establishing a framework programme for Solidarity and the management of migration flows for the period 2007-2013

The Communication establishing a Framework programme on "Solidarity and the management of migration flows" is part of a coherent set of proposals aiming at providing an adequate support to an area of freedom, security and justice under the financial perspectives 2007-2013. Indeed, the three key objectives of freedom, security and justice are to be developed in parallel and to the same degree of intensity, thus allowing for a balanced approach, based on the principles of democracy, respect for fundamental rights and freedoms, and the rule of law. Each of these objectives is supported by a Framework programme, providing for the necessary coherence between relevant interventions in each policy area, and clearly linking political objectives and the resources available to support them. Furthermore, this structure represents a major simplification and rationalisation of existing financial support in the area of freedom, justice and security, thus allowing for greater flexibility in the allocation of priorities and increasing overall transparency.

1. INTRODUCTION

The progressive establishment of the area of freedom, security and justice has become, since its first introduction as an objective in the Treaty of Amsterdam, one of the cornerstones of the development of the European Union. This objective is the corollary to the overarching objectives of economic growth and sustainable development: increased prosperity at the level of our continent can only be achieved in a climate of safety and security which guarantees citizens and the business sector an effective exercise of their rights and freedoms, as well as protection from crime and terrorism.

The area of freedom, security and justice comprises a balance between guaranteeing the core rights of the individual (freedom, security and justice) as well as delivering the core responsibilities (security, justice) expected of the Union[1]. The citizens of Europe rightly expect the European Union, while guaranteeing respect for fundamental freedoms and rights, to take a more effective, joint approach to cross-border problems such as illegal migration and trafficking in and smuggling of human beings, as well as to terrorism and organised crime.

Building upon the results of the Tampere programme, the European Council adopted in November 2004 a multiannual programme ('The Hague Programme') defining a new agenda to enable the Union to further develop what has already been achieved and to meet challenges

[1] "*Freedom is the unifying principle, the linchpin of the European project. But without security, without a system of law and justice recognised by the people, the exercise of freedom and respect for democratic values could not be guaranteed. The European area of freedom, security and justice thus provides a guarantee for the principles of democracy, respect for human rights and the rule of law. As an essential element of European citizenship, the common recognition of these principles, which are now embodied in the Charter of Fundamental Rights, is the cornerstone of integration for everyone living in the Union.",* "A project for the European Union" - COM (2002) 247.

ahead. Among the objectives set out are the further development of common migration and asylum policies and the establishment of an integrated management system for controls and surveillance of external borders, which must be envisaged in the context of the general principle of solidarity and fair sharing of responsibility between the Member States, including their financial consequences. These concepts are also enshrined in the Constitution as governing principles for the development of common policies on border checks, asylum and immigration.

In its Communications setting out its strategic orientations for the definition of the Financial Perspectives 2007-2013[2], the Commission has already highlighted the objective of supporting the development of the area of Freedom, Security and Justice with adequate financial resources, to be included in a new Heading relating to "Citizenship, Freedom, Security and Justice". In accordance with the objectives set out by the European Council, the proposed framework programme "Solidarity and management of migration flows" will aim at addressing the issue of a **fair share of 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 immigration.

2. THE PROPOSED INTERVENTION - FRAMEWORK PROGRAMME ON SOLIDARITY AND MANAGEMENT OF MIGRATION FLOWS

2.1. Objectives of the framework programme

The implementation of Community financial programmes must be part of an effective policy mix aiming at achieving specific objectives linked to the development of EU policies. In this respect, the choice of areas and types of intervention must be established on the basis of an assessment of the needs to be addressed, and take into account the complementarity with other possible tools, in particular legislation. So far, common asylum, migration and border management policies have been mainly established through legislation. The standards have laid the foundations of Community policy in these areas. However, the implementation of the standards implies a differential burden imposed on individual Member States, some of whom bear a disproportionate part of the responsibilities that will benefit the Community as a whole, and uneven application would endanger the project of creating a level-playing field.

The number of persons affected by these policy areas is considerable. In the EU 25 the Member States are responsible for controlling about 6.000 km of land border and about 85.000 km of coastline; it is estimated that annually 100 million passengers arrive at international airports of the EU amidst whom persons to be refused entry. Member States refuse annually more than 340.000 third country nationals the right to enter into the EU, apprehend about 500.000 third country nationals illegally residing on their territories and remove about 300.000 third country nationals who have entered illegally, have resided illegally or are returned to their country for other reasons. In the EU 25 about 2.2 million permits are granted each year to third country nationals to reside or stay, for the purpose of

[2] Communication from the Commission to the Council and the European Parliament. Building our common future – policy challenges and budgetary means of the enlarged Union 2007-2013. COM(2004) 101, 10.2.2004.
Communication from the Commission to the Council and the European Parliament. Financial perspectives 2007-2013 - COM(2004) 487, 14.7.2004.

employment, family reunification, study, research or other reasons. The total number of third country nationals legally residing in the EU 25 is currently double the number of the EU citizens having chosen to exercise their right to reside in another Member State; the population continues to grow mainly due to net migration.

Financial solidarity of the Community must be able to support further development and implementation of the comprehensive and balanced approach defined by the EU as regards management of migration flows. It must contribute adequately to the four essential pillars of this approach:

- First, the Member States have committed themselves to applying the Schengen acquis and establishing a common integrated border management system in the EU. Accordingly, they are obliged to manage efficiently the flows of persons at external borders, in order to ensure, on the one hand, a high level of protection at the external borders for the internal security of the Member States, and, on the other, a smooth crossing of these borders by bona fide travellers, such as those issued visas by consular services of Member States abroad. These objectives imply, particularly in terms of reducing illegal entries, securing the coastlines in the Mediterranean and the Eastern land borders and enhancing the activities of Member States' consular services in third countries;

- Second, with the adoption of a European Return Action Programme in 2002, Member States have pledged to develop a common return policy on the basis of common standards and best practices. An effective Community return policy is a necessary complement to a credible legal immigration and asylum policy as well as an important component in the fight against illegal immigration. The efforts of individual Member States regarding return management are not only limited in financial terms, but also in terms of political impact and signal effect; Member States face similar difficulties in implementing return operations and they can collectively be better overcome by pooling resources and experience. Moreover, Member States should be encouraged to develop 'integrated return management': analysing and assessing the potential group of returnees, the legal and logistical constraints in the Member State and the situation in the country of return, and developing specific and targeted actions commensurate to the challenge. This should contribute to reducing, in the EU without internal borders, secondary movements of illegally staying third country nationals.

- Third, the implementation of a common immigration policy requires that the Community provides a credible response to the multidimensional issue of integration of third country nationals. The common immigration policy has clear implications for competitiveness and the fulfilment of the Lisbon objectives. While immigration in itself is not a solution to demographic ageing, more sustained immigration flows could increasingly be required to meet the needs of the EU labour market and ensure Europe's prosperity. This highlights the importance of ensuring that an EU migration policy delivers a secure legal status and a guaranteed set of rights to assist the integration of those who are admitted, to promote their integration into all aspects of society, over and above integration into the labour market. A common approach concerning the rights and obligations of immigrants should be developed. The Common Basic Principles for immigration integration policy in the European Union adopted by the Council and the representatives of the governments of the Member States in 2004, recognise that immigration is a permanent feature of European society and that all Member States should maintain and further develop societies in which newcomers feel welcome, as the failure of an individual Member State to develop and

implement a successful integration policy for migrants can have in different ways adverse implications for other Member States. Accordingly, Member States should be encouraged to develop and implement programmes and activities welcoming newcomers, to promote active citizenship for all third country nationals through more civic, cultural, religious and political participation, to improve the capacity of public and private service providers to respond to their needs and to assist society in adjusting to diversity.

- Last, to prevent unnecessary secondary movements in an EU where only one Member State is responsible for examining a particular asylum claim, possible divergences in the practice of reception and admission, should be minimized as much as possible. An equivalent implementation of high quality of the common European asylum policy across the Member States must be encouraged through a balance of efforts between Member States in receiving and bearing the consequences of receiving refugees and displaced persons.

Another essential element of this approach is that of cooperation with third countries. In accordance with the proposed structure of the financial framework, this external dimension will not be included in the framework programme "Solidarity and management of migration flows", but will be duly taken into account under Heading 4 of the proposed financial framework, through the implementation of external aid instruments presented by the Commission in September 2004.

2.2. Structure of the framework programme

The framework programme will establish financial solidarity mechanisms (Funds) covering four areas:

- controls and surveillance of external borders ('integrated border management'), visa policy, in complementarity with the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (FRONTEX Agency);

- return of third country nationals illegally residing in the EU;

- integration of legally residing third country nationals; and

- asylum (building upon the existing European Refugee Fund[3]).

It is clear that the development and implementation of common policies, including Community legislation, in each of these four areas respond to the need to ensure complementary but different operational objectives. It implies a dissimilar level and intensity of obligations for Member States which must be met by adequate financial support. It also means that each Member State must put in place and sustain measures at national level allowing for a proper fulfilment of their obligations with regard to each of the four policy areas, even if they are only affected to a limited degree.

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[3] Council Decision 2004/904/EC of 2 December 2004 establishing the European Refugee Fund for the period 2005-2010 - JO L 381, 28.12.2004, p. 52.

Furthermore, these actions have a different legal basis in the Treaties, and cover areas that are subject to the provisions of the Protocols relating to the position of Denmark, Ireland and the United Kingdom or to the Schengen acquis.

Therefore, the "solidarity and management of migration flows" framework programme shall be made of four separate instruments (establishing four "Funds") corresponding to each of the four policy areas.

Even though implemented through four different legal instruments, the four Funds constitute a coherent ensemble both politically and operationally: each Fund reflects the objectives of a policy which will, in association with the three others, allow the development of an area of Freedom. It is the successful implementation of each of the four dimensions that will lead to the achievement of the overall objectives. Therefore, the four Funds will operate according to common implementation and management rules, in accordance with the same strategic calendar, and be the subject of coordinated evaluation and review processes (see section 3).

Once the Constitutional Treaty has entered into force, the Commission may examine the possibilities for further streamlining and simplification that could result from a new legal basis (in particular article III-268).

The allocation of financial resources to Member States within each Fund will be 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 Community for the policy area concerned. These criteria will mostly be of a quantitative nature. In order to take into account both the baseline situation of the Member States and the evolution of this situation, criteria will be as far as possible based on "stock" data and "flows" data: this will allow for a reinforcement of available funds in one Member State to support, for example, a growing number of persons falling within the target population.

For this purpose, the instruments foresee the use of Community statistics, and where these are not available, national statistics. While some technical difficulties may arise, it is felt that the use of statistics in the allocation of funds would have the positive effect of increasing the attention paid at national level to the correct and timely provision of data The proposed use of these statistics in the allocation of the funds for the period 2007-2013 is feasible, in particular because the forthcoming legislation on migration statistics is expected to result in better availability and harmonisation of statistics.

For the External Borders Fund, the possibility of a weighting mechanism is created, to be based inter alia on the common risk analysis carried out by the FRONTEX Agency. Special provisions are foreseen in order to cover the specific additional costs linked to the implementation of the FTD and FRTD scheme in accordance with Council Regulation (EC) No 693/2003 and Council Regulation (EC) No 694/2003.

For the European Refugee, Integration and Return Funds, building on the example of the European Refugee Fund, each Member State will receive a small fixed amount in order to ensure a minimum level of resources for the implementation of the objectives.

2.3. Complementarity with other instruments and policy measures

The framework programme constitutes one element of the policy mix set up for the further development of common asylum, migration and external border policies: it must be closely

linked to the implementation and development of other policy tools, in particular legislation. Financial solidarity must serve clearly identified objectives and allow for the cofinancing of actions that bring a high level of added value to the Community. The use of the Funds must be intrinsically linked to the improvement of the national situation with regard to common standards, or bring collective benefits at EU level through the implementation of coordinated or joint actions.

The establishment and operation of the framework programme will be complementary to other initiatives and bodies set up within the context of common migration, asylum and external border policy.

In particular, the development of large scale IT systems in support of the implementation of external border and visa policy (Visa Information System, Schengen Information System) and asylum policy (EURODAC) constitute substantial contributions to Community solidarity through the establishment of cooperation and cost/effective exchange of information between the Member States. Although not covered by the budget forecast under the "Solidarity and Management of migration flows" framework programme, the development and operation of these information systems are long term commitments, and the legal acts establishing them do not contain provisions limiting their duration. In addition to the extension anticipated for enlargement, further developments of functionalities cannot be excluded over the period 2007-2013, which will need to be covered by the budget forecast under Heading 3 of the proposed financial framework.

The activities of the FRONTEX Agency also constitute an effective tool to enhance cooperation through technical and operational assistance, pooling of equipment and resources that can be made available to all participating States. The progressive development of the scope and activities of the agency, in particular after the evaluation scheduled for 2007, will require adequate resources under Heading 3 of the future financial framework. The Commission services will associate the FRONTEX Agency to the programming and evaluation

Based on the results of the preparatory action currently running, the Commission will consider the creation of a European Migration Observatory, in order to reinforce the monitoring and analysis of multidimensional aspects of the migration and asylum phenomena.

Provisions have been made not only to avoid any kind of duplication between Funds, but also to ensure the development of synergies wherever possible. In particular, financing return measures for rejected asylum seekers shall become ineligible within the framework of the European Refugee Fund from the first year of the multiannual programme starting on 1st January 2008.

Funding for the Return Fund will only be foreseen from 2008 onwards, taking into account, as suggested in the Hague programme, the need to evaluate the results of the preparatory actions on return (2005 – 2006) beforehand.

Particular attention has also been given to the issue of complementarity and synergy of actions between the Integration Fund and the European Social Fund (ESF), both in the definition of the objectives of the Integration Fund and in its implementation. Through its specific and innovation oriented approach, the Integration Fund will indeed be able to complement the wider objectives of the ESF as well as to identify successful strategies and practices that can be further mainstreamed within the ESF.

3. RATIONALISATION AND SIMPLIFICATION

3.1. Transition with existing instruments

The four Funds implemented under the "Solidarity and Management of Migration Flows" framework programme provide a coherent ensemble and fully support to the development of common policies in the areas of external border, migration and asylum, in full agreement with the principles of solidarity, added value, additionality and complementarity. They will take over and develop to their full operational level the actions of existing programmes and preparatory actions such as ARGO, INTI, the preparatory actions in the area of return management and the European Refugee Fund (ERF).

The second phase of the ERF started on 1st January 2005 and ends in 2010. In addition to clarifying the eligibility conditions of the voluntary return strand, the proposal to amend the ERF attached to the Communication simply aims at putting its calendar and implementing arrangements as regards management and control system in line with those proposed for the other three instruments : its duration is prolonged until 2013, and the new provisions will come into force as of 1st January 2008, in order to allow for the full implementation of the first multiannual programming cycle under the current decision, from 2005 to 2007. After these dates, the programming cycle will be in line with the other three Funds.

It should however be anticipated that revisions on the substance of the ERF should be presented at a later stage in 2005, together with Communications by the Commission concerning in particular:

- The Declaration on persons under national resettlement programmes in light of the scope of the Council Decision on the ERF II for the period 2005 – 2010 where the Commission is invited to present a proposal for a modification of the European Refugee Fund by the end of 2005 to take into account the Council Conclusions of 2 November 2004 on improving access to durable solutions. Those Council Conclusions had asked the Commission to come forward with a proposal for an EU Resettlement Scheme. The arrangements for funding or part-funding of resettlement which takes place under the EU Resettlement Scheme, or indeed outside it, will need to be settled.

- The Hague Programme calling for the establishment, in 2005, of "appropriate structures involving the national asylum services of the Member States with a view to facilitating practical and collaborative cooperation". The questions of the inclusion of these structures under 'Community actions' and the options envisaged for the European Support Office therefore need to be addressed.

3.2. Common management and control arrangements

As the objectives of the framework programme are to strengthen the implementation of common policies at national level, it will be implemented within the framework of shared management between the Member States and the Commission. This will enable the Member States to select the actions in accordance with a thorough assessment of needs and a strategy adapted to the local situation, this strategy being agreed in cooperation with the Commission. As shared management cannot be applied to third countries, there will be a delegation of tasks in decentralised management to the countries associated with the implementation, application and development of the Schengen acquis which participate in the External Borders Fund. The Community actions and the technical assistance of the Commission, as referred to within the

draft instruments, will be implemented by the Commission within the framework of direct management.

The same provisions have been defined for the operation of the four instruments: multiannual strategic programming cycles (with two periods defined as 2007-2010 and 2011-2013) on the basis of guidelines communicated by the Commission, annual allocation of resources and operational programming, multiannual evaluations.

Similarly, the management and control systems of the four Funds are to be aligned, and to that end the draft decisions provide for common or shared implementation provisions or structures (Committee, national arrangements for management and audit).

The need for coherence and transparency are the driving forces in the management modalities of the respective Funds. Coherence, as the draft instruments lay down the minimal conditions applicable to the management, internal control and audit systems as well as the involvement of each actor. Transparency, as the results and outcome of each part of the instrument are known to the different actors. The four draft decisions also take into account the conclusions of the evaluations of the programming and delivery mechanism of the Structural Funds, in order to set up delivery mechanisms that ensure at the same time a concentration of resources on key and strategic objectives, a delivery mechanism that ensures effective implementation at both national and Community level, and a sound management and control of Community funding.

3.3. Evaluation and review

Evaluation of the implementation, results and impacts of policy instruments must be carried out at regular intervals, in order to ensure effectiveness of action. This is particularly crucial in the context of the framework programme "Solidarity and management of migration flows":

- first, during the years 2005-2006, additional studies will be carried out in order to define the priorities of the initial multiannual guidelines under the new programme, as well as establish a coherent and complete monitoring and evaluation framework (including the definition of common sets of input, output, result and outcome indicators both quantitative or qualitative) ;

- second, the results of a first evaluation on the operation of the framework programme to be made available in 2010, at the time of the review of the Hague Programme; the results of this evaluation will also feedback into the management and operation of the programme ;

- third, evaluations of the results of the multiannual programmes under the Funds, to be made available in 2012, to draw useful lessons in view of their renewal and 2015, to ascertain their impact.

The policy developments and the results of evaluations also require the possibility to review the programme, and to adapt it if necessary to new or changing needs and priorities:

- in 2009, the possibility of reviewing certain aspects of the operation of the Funds, such as the financial distribution keys in the areas of integration and external borders, notably, in the case of integration, in light of the results of the final evaluation of preparatory actions initiated in 2005.

- by the end of 2010, on the basis of the first evaluation, in order to set out the main orientations and priorities on the future of the framework programme.

4. FINANCIAL RESOURCES

The overall amount foreseen for the framework programme "Solidarity and management of migration flows" is 5.866 million euro for the period 2007-2013 (in current prices). Within this envelope, 1.184 million euro are foreseen for asylum; 759 million for the return Fund; 1.771 million euro for integration of third-country nationals; and finally 2.152million euro for external borders management. The amounts allocated to the Member States will not be transferable from one Fund to another.

In addition to the overall amount for the above framework programme, for the FRONTEX Agency, an indicative amount of 285.1 million euro is foreseen for the period 2007-2013, while the implementation of large-scale information systems has been estimated at over 900 million euro; finally, the possible setting-up of an European Migration Observatory as a follow-up to current preparatory actions has also been budgeted for, to an indicative amount of 62.3 million euro for the same period.

ANNEX

Establishing a framework programme on Solidarity and the Management of Migration Flows for the period 2007-2013

Complementarity with agencies and other instruments in the area of Freedom, Security and Justice

Several complementary instruments are foreseen under the Financial Perspectives to contribute to the achievement of the policy objectives set in the area of Justice, Freedom and Security:

– The framework programmes that will replace the multitude of budget lines that the Commission currently manages in this field ;

– Community financing of agencies and Community or Union bodies ;

– Development and management of related large scale information systems.

The following agency related to the area of the above framework programme will be covered under the new financial perspectives:

- **European Agency for the Management of Operational Cooperation at the External Borders, established by** Council Regulation (EC) No 2007/2004 of 26 October 2004 establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (OJ L 349, 25.11.2004, p. 1).

Other existing instruments will remain in force, while not being covered by the new framework programme. These instruments relate to the development and implementation of large scale IT systems in the areas of asylum, migration and external border policies, and were established by legislative acts of the Council and/or European Parliament:

- The **EURODAC system**, established by Council Regulation (EC) No 2725/2000 of 11 December 2000 concerning the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of the Dublin Convention (OJ L 316, 15/12/2000, p. 1) and of 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 L 050 , 25/02/2003 p. 1).

- the **Visa Information System (VIS),** established by Council Decision 2004/512/EC of 8 June 2004 establishing the Visa Information System (VIS) (OJ L 213, 15/06/2004 p. 5), and for which the Commission has put forward a proposal (COM(2004)835) setting out the purpose, the functionalities of and responsibilities for the Visa Information System (VIS),

- The **Schengen** Information **System (SIS II),** for which the Commission intends to present a proposal for a European parliament and Council Regulation by the end of the first quarter 2005.

The development and operation of these information systems are long term commitments, and the legislative acts establishing them do not contain provisions limiting their duration. In addition to the extension anticipated for enlargement, further developments of functionalities cannot be excluded over the period 2007-2013.

EXPLANATORY MEMORANDUM

1. INTRODUCTION

The preparation of the financial perspectives for 2007-2013 has been guided from the outset by a policy-led approach, in order to ensure consistency between political objectives and the amounts allocated to pursue them. In this context, the establishment of an area of freedom, security and justice is considered to be one of the main priorities of the European Union for the years to come, to be supported through substantially increased financial means. In its Communications « *Building our common Future - Policy challenges and Budgetary means of the Enlarged Union 2007-2013*»[4] and « *Financial Perspectives 2007 – 2013* »[5], the Commission also underlined the importance of using the revision of the legal instruments for the next financial perspectives to create a significant movement towards greater simplicity. Structuring its proposals around three general and policy-led programmes ("Solidarity and management of migration flows", "Fundamental Rights and Justice", "Security and safeguarding freedoms"), the Commission sets out a clear framework for the development of financial interventions of the Community in support of the three objectives of Justice, Freedom and Security.

The content of these programmes was outlined in a Commission working document6, which identified the following key objective for the "Solidarity and management of migration flows" general programme: *to support the principle of solidarity in managing people flows by ensuring a fair share of 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 immigration. (..)*

This solidarity should enhance and support the implementation of Community policy and legislation relating to four complementary dimensions of management of migration flows:

- integrated management of external borders, in order to ensure an equivalent and uniform level of protection at the external borders;

- asylum policy, as is already the case under the European Refugee Fund[7] in order to support the development and implementation of a common European asylum policy based on solidarity between Member States and promote a balance in the efforts made by Member States in bearing the consequences of receiving refugees and displaced persons;

- fight against illegal immigration, and in particular the return of illegally resident third-country nationals in the EU or persons irregularly migrating towards the EU;

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4 COM(2004) 101, 10.2.2004

5 COM(2004) 487, 14.7.2004

6 Communication of Mr Vitorino to the Commission, 28 September 2004 (SEC(2004)1195) "Giving an operational dimension to the area of freedom, security and justice: Policy context and orientations for future financial interventions".

7 Council Decision 2004/904/EC of 2 December establishing the European Refugee Fund for the period 2005 to 2010 - OJ L 381, 28.12.2004..

- admission and integration of third country nationals, in particular as regards their social, civic and cultural integration, in order to enable them to settle and take actively part in all aspects of European societies.

2. JUSTIFICATION OF THE ACTION - MODIFICATION TO THE EUROPEAN REFUGEE FUND

The first expression of this solidarity was the creation of the ERF in 2000[8], on the basis of three years of preparatory actions. The Fund, which was backed by the European Parliament and based on a proposal by the Commission, has been instrumental in laying the foundations of collective action by the Community for the reception of asylum-seekers and people requiring international protection as part of a comprehensive approach. It has also helped to secure agreement on the Directive on temporary protection in the event of a mass influx of displaced persons. The first phase of legislative harmonisation establishing the common European asylum system is nearing completion, and under the terms of the original decision the Council had to review this decision by 31 December 2004 at the latest on the basis of a proposal by the Commission.

A thorough evaluation and extensive consultation of the parties concerned was carried out in 2003: mid-term evaluation of ERF I completed in November 2003, a broad-based review conference held on 30-31 October 2003. Building on the results of this evaluation as well as on an extended impact assessment[9], the Commission adopted on 12 February 2004 a proposal for the establishment of the ERF for a second phase running from 2005 to 2010[10]. The Decision was adopted by the Council on 2 December 2004.

The second phase of the ERF contains many provisions and mechanisms that are now proposed for the three other Funds composing the "solidarity and management of migration flows" general programme:

- more strategic programming of Fund operations, with the Commission being given a bigger leadership role and account being taken of the legislative framework adopted by the Community on asylum policy;

- the inclusion in the criteria for distributing funds among the Member States not only the target population, but also the fact that the new Member States in particular must make structural investments to guarantee the effectiveness of national asylum systems;

- Programming and action lifecycles that yield more useful and viable results through multi-annual strategies based on a consultation process (between national partners and between the Member States and the Commission);

- a reinforcement of the provisions regarding shared management, backed up by increased support at Community level (a common financial and administrative framework and

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8 Council Decision 2000/596/EC of 28 September 2000 establishing the European Refugee Fund for the period 2000-2004 - OJ L 252, 6.10.200, p.12.

9 SEC(2004) 161, 12.2.2004.

10 COM(2004) 102, 12.2.2004, proposal for a Council Decision establishing the European Refugee Fund for the period 2005-2010.

common management tools), as a guarantee that the instrument is implemented in accordance with the principle of sound financial management.

Furthermore, the proposal provided for a gradual increase in the budget, more substantial from 2008, as a solid expression of Community solidarity, with a view to reaching significant results and having a strong impact not only on target groups, but also on the systems themselves.

In view of the recent evaluation and review of this proposal, as well as of the duration of this instrument, the modifications to be made to the ERF within the framework of the adoption of the "Solidarity and Management of Migration Flows" general programme under the new Financial perspectives therefore need to be focused on rationalisation of procedures (to align them to those proposed for the three other Funds), duration of implementation (extension until 2013) and complementarity and synergy (in particular as regards the actions under the "Return Fund").

2.1. Duration of the instrument

As the current phase of the ERF runs into 2010, it is proposed to prolong its duration until the end of the financial perspectives, i.e. 2013. In operational terms, this will translate into the implementation of a third multiannual programme (2011-2013). However, as the Member States are currently beginning under ERF II the implementation of the first strategic multiannual programme, which runs from 2005 to the end of 2007, it is proposed that the date of entry into force of this proposal is at the beginning of the first year of the second multiannual programme, that is on 1 January 2008.

2.2. Rationalisation of the management and control systems

The ERFII (2005-2010) already contains detailed provisions on the operational implementation of shared management. In order to ensure the consistency and possible common arrangements with the management and control procedures of the other three funds proposed as part of this general programme, the Commission is proposing to adopt the same provisions for all four Funds.

These provisions have been defined taking into account in particular the reform of the structural funds delivery system[11], as well as the orientations set out by the Commission for the definition of respective responsibilities of the Commission and the Member States in its Communication of 6 September 2004[12]. In order not to complicate the implementation of the management and control systems, it is proposed that they also enter into force after the completion of the first multiannual cycle on 1 January 2008.

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[11] Proposal for a Council regulation laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund - COM(2004) 492, 14.7.2004.

[12] Communication from the Commission to the European Parliament and the Council « The respective responsibilities of the Member States and the Commission in the shared management of the Structural Funds and the Cohesion Fund - Current situation and outlook for the new programming period after 2006" - COM(2004) 580, 6.9.2004.

2.3. Complementarity and synergy

The ERF was the first Community financial instrument expressing solidarity between the Community and the Member States dealing with the consequences of the establishment of common policies in the area of external borders, and common immigration and asylum policies. With the proposal put forward of the creation of a coherent general programme , the ERF becomes part of an ensemble of measures aiming at creating a level-playing-field at European level.

To this end, this proposal, along with the draft decisions establishing the Fund for integration of legally staying third country nationals, the External Borders Fund and the Return Fund provides for the creation of mechanisms ensuring a coherent approach of the programming, implementation and evaluation of the four instruments. It also contains a modification of the scope of eligible actions as regards return, in order to prevent any overlap with the proposed Return Fund. Financing return measures for rejected asylum seekers should be done under the Return Fund and shall therefore become ineligible within the framework of the European Refugee Fund from the first year of the multiannual programme starting on 1st January 2008.

The reasons for this dividing line between the two Funds are set out in more detail in the extended impact assessment.

3. ADAPTATION TO FURTHER DEVELOPMENTS

The Commission shall bring forward a proposal revising the substance of the ERF at a later stage. Amendments would take into account in particular the Hague Programme and the Declaration on persons under national resettlement programmes in light of the scope of the Council Decision on the ERF II for the period 2005 – 2010.

The amendments would relate to the following issues:

- In the Declaration on persons under national resettlement programmes the Commission is invited to present a proposal for a modification of the European Refugee Fund by the end of 2005 to take into account the Council Conclusions of 2 November 2004 on improving access to durable solutions. Those Council Conclusions had asked the Commission to come forward with a proposal for an EU Resettlement Scheme. Consequently, in a proposal for revising the ERF the arrangements for funding or part-funding of resettlement which takes place under the EU Resettlement Scheme, or indeed outside it, will need to be settled.

- The Hague Programme calling for the establishment, in 2005, of "appropriate structures involving the national asylum services of the Member States with a view to facilitating practical and collaborative cooperation". Consequently, consideration will need to be given how to support these structures.

The Communications on these aspects as well as the proposal modifying the ERF are scheduled for the autumn of 2005.

4. BUDGETARY IMPLICATIONS

The financial statement attached to the proposal for the second phase of the ERF in February 2004 remains valid, in view of the still significant number of asylum applications in the member States. Voluntary return of rejected asylum seekers represents today a small part of the actions implemented through the Fund, and therefore it is unlikely that the suppression of these actions from the scope of the Fund will have significant consequences in budgetary terms.

The prolongation of the Fund for the years 2011-2013 should remain in line with the estimates made in 2004, taking into account the new priorities and actions that are likely to be added by the proposal forecast for the autumn of 2005. The financial allocation for the Fund for 2005 and 2006 was EUR 114,09 million. Under the Financial Perspectives proposed by the Commission for 2007-2013 the allocation amounts to EUR 1.184million. For the period 2008 – 2013 the amount is EUR 1.112,7 million.

A specific amount must also remain available as a reserve for the implementation of emergency measures. This amount (10 M€ per year) will remain unchanged during the period; it is necessary to cover the first few weeks of action in case of a mass influx of refugees, and can be after this time complemented by relevant modifications of the normal multiannual and annual programmes in the Member States.

2005/0046 (COD)

Proposal for a

DECISION OF THE EUROPEAN PARLIAMENT AND THE COUNCIL

establishing the European Refugee Fund for the period 2008-2013 as part of the General programme 'Solidarity and Management of Migration Flows'

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the Commission[13],

Having regard to the opinion of the European Economic and Social Committee[14],

Having regard to the opinion of the Committee of the Regions[15]

Acting in accordance with the procedure laid down in Article 251 of the Treaty[16],

Whereas:

(1) With a view to the progressive establishment of an area of freedom, security and justice, the Treaty establishing the European Community provides both for the adoption of measures aimed at ensuring the free movement of persons, in conjunction with flanking 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 special meeting in Tampere on 15 and 16 October 1999, reaffirmed its resolve to create an area of freedom, security and justice. For that purpose, a common European policy on asylum and migration should aim both at fair treatment of third country nationals and better management of migration flows. A common policy on asylum, including a Common European Asylum System, is a constituent part of the European Union's objective of progressively establishing an area of freedom, security and justice open to those who, forced by circumstances, legitimately seek protection in the European Union.

(3) Implementation of this policy should be based on solidarity between Member States and requires the existence of mechanisms to promote a balance of effort between Member States in receiving and bearing the consequences of receiving refugees and

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displaced persons. To that end, a European Refugee Fund was established for the period 2000-2004 by Decision 2000/596/EC[17]. This decision was replaced by Council Decision 2004/904/EC of 2 December 2004 establishing the European Refugee Fund for the period 2005 to 2010[18]. This ensured continued solidarity between Member States in the light of recently adopted Community legislation in the field of asylum, taking account of the experience acquired when implementing the Fund for the period 2000-2004.

(4) In light of the Commission proposals establishing the Fund for the Integration of legally staying third country nationals, the Fund for the return of illegally staying third country nationals (hereafter 'Return Fund') and the external borders Fund for the period 2007-2013, as part of the general programme 'Solidarity and Management of Migration Flows', in particular in view of setting out common management, control and evaluation arrangements, a new European Refugee Fund should be established.

(5) It is necessary to adapt the duration of the Fund to the duration of the multiannual financial framework as set out in the Inter-institutional agreement applicable for the period 2008-2013.

(6) This instrument is designed to form part of a coherent framework entitled the General programme 'Solidarity and Management in Migration Flows', which aims at addressing the issue of a fair share of 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 immigration, as developed in accordance with Title IV of the Treaty establishing the European Community.

(7) It is appropriate to support the efforts made by Member States to grant appropriate reception conditions to refugees and displaced persons and to apply fair and effective asylum procedures so as to protect the rights of persons requiring international protection.

(8) The integration of refugees into the society of the country in which they are established is one of the objectives of the Geneva Convention of 28 July 1951 relating to the Status of Refugees, as supplemented by the New York Protocol of 31 January 1967. Such persons must be enabled to share the values set out in the Charter of Fundamental Rights of the European Union. To this end, there should be support for action by Member States to promote their social, economic and cultural integration in so far as it contributes to the economic and social cohesion, the maintenance and strengthening of which is one of the Community's fundamental objectives provided for by Articles 2 and 3(1)(k) of the Treaty.

(9) Practical support is needed to create or improve conditions enabling refugees and displaced persons to take an informed decision to leave the territory of the Member States and return home, should they so wish, in complementarity with the provisions of the European Return Fund.

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17 OJ L 252, 6.10.2002, p. 12.

18 OJ L 381, 28.12.2004.

(10) A financial reserve should be established for the implementation of emergency measures to provide temporary protection in the event of a mass influx of refugees pursuant to Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof [19].

(11) The support provided by the Fund will be more efficient and better targeted if co-financing of eligible actions is based on two multiannual programmes and on an annual work programme drawn up by each Member State taking into account its situation and needs.

(12) It is fair to allocate resources proportionally to the burden borne by each MemberState through its efforts in receiving refugees and displaced persons, including refugees enjoying international protection within the framework of national programmes.

(13) In the context of shared management as referred to in Article 53 (1), point (b) of the Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities[20], the conditions allowing the Commission to exercise its responsibilities for implementation of the general budget of the European Communities should be specified and the obligations for the cooperation of the Member States clarified. Applying these conditions will 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 of the Financial Regulation.

(14) The Commission should establish the indicative breakdown of available commitment appropriations using an objective and transparent method.

(15) Under technical assistance, the Fund should provide support for evaluations, improvement of administrative capacity linked to the management of the Fund, studies, pilot projects and exchanges of experience intended, in particular, to encourage innovative approaches and practices.

(16) Member States should adopt adequate measures to guarantee the proper functioning of the management and control system. To this end, it is necessary to establish general principles and necessary functions which all programmes shall fulfil.

(17) It is necessary to provide for the designation of a single responsible authority for the management of the Fund's interventions in each Member State and to clarify its responsibilities. Designation and the functions of the audit authority should be also be foreseen. In addition, in order to guarantee uniform quality standards concerning the certification of expenditures before their transmission to the Commission and to clarify the nature and quality of the information on which declarations of expenditure are based it is necessary to provide for the designation of the certification authority.

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[19] OJ L 212, 7.8.2001, p. 12.

[20] OJ L 248, 16.9.2002, p.1.

(18) In accordance with the principles of subsidiarity and proportionality, Member States have the primary responsibility for the implementation and control of the interventions.

(19) 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 to guarantee efficient and correct implementation of their multiannual and annual programmes. In particular, as far as management and control are concerned , it is necessary to establish the modalities by which Member States ensure that the systems are in place and function satisfactorily.

(20) Without prejudice to the Commission's powers as regards financial control, cooperation between the Member States and the Commission in this field should be increased and the criteria should be established which allow the Commission to determine, in the context of its strategy of control of national systems, the level of assurance it can obtain from national audit bodies.

(21) The effectiveness and impact of actions supported by the Fund also depend on their evaluation. The responsibilities of the Member States and the Commission in this regard, and arrangements to ensure the reliability of evaluation, should be formalised.

(22) 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.

(23) This Decision establishes a financial framework for the entire duration of the programme, which is to be the principal point of reference for the budgetary authority within the meaning of point 33 of the interinstitutional agreement of 6 May 1999 between the European Parliament, the Council and the Commission on budgetary discipline and improvement of the budgetary procedure[21].

(24) Since the objective of this Decision, namely to promote a balance of effort between Member States in receiving refugees and displaced persons, cannot be sufficiently achieved by the Member States and can therefore by reason of the scale and effects of the action be better achieved at Community level, the Community may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Decision does not go beyond what is necessary to achieve this objective.

(25) 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.[22]

(26) In accordance with Articles 1 and 2 of the Protocol on the position of Denmark, annexed to the Treaty on European Union and to the Treaty establishing the European Community, Denmark is not taking part in the adoption of this Decision and is not bound by it nor subject to its application,

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[21] OJ C 172, 18.6.1999, p. 1.

[22] OJ L 184, 17.7.1999, p. 23.

HAVE ADOPTED THIS DECISION:

CHAPTER I
SUBJECT-MATTER, OBJECTIVES AND ACTIONS

Article 1

Subject matter and scope

This decision establishes for the period from 1 January 2008 to 31 December 2013 the European Refugee Fund, hereinafter referred to as « The Fund », as part of the general programme "Solidarity and Management of Migration Flows" , in order to contribute to the strengthening of the area of Freedom, Security and Justice.

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 ones as well as monitoring and control mechanisms based on a share of responsibilities between the Commission and the Member States.

Article 2

General Objectives of the Fund

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

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

Article 3

Eligible actions in the Member States

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

   (a) reception conditions and asylum procedures;

   (b) integration of persons referred to in Article 6 whose stay in the Member State is of a lasting and stable nature;

   (c) voluntary return of persons referred to in Article 6 (1), (2) and (4), provided they have not acquired a new nationality, and of persons referred to in Article 6

(3), provided they have not received a negative decision further to their request for international protection.

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

(a) accommodation infrastructure or services;

(b) provision of material aid and medical or psychological care;

(c) social assistance, information or help with administrative formalities;

(d) legal aid and language assistance;

(e) education, language training and other initiatives which are consistent with the status of the person;

(f) the provision of support services such as translation and training to help improve reception conditions and the efficiency and quality of asylum procedures;

(g) information for local communities who will be interacting with those being received in the host country.

3. As regards integration into Member States' society of persons referred to in Article 6 and members of their family, eligible actions shall include the following :

(a) advice and assistance in areas such as housing, means of subsistence, integration into the labour market, medical, psychological and social care;

(b) actions enabling recipients to adapt to the society of the Member State in socio-cultural terms, and to share the values enshrined in the Charter of Fundamental Rights of the European Union;

(c) actions to promote durable and sustainable participation in civil and cultural life;

(d) measures focusing on education, vocational training, recognition of qualifications and diplomas;

(e) actions designed to promote self-empowerment and to enable these persons to provide for themselves;

(f) actions that promote meaningful contact and constructive dialogue between these persons and the receiving society, including actions which promote the involvement of key partners such as the general public, local authorities, refugee associations, voluntary groups, social partners and the broader civil society;

(g) measures to support the acquisition of skills by these persons, including language training;

(h) actions that promote both equality of access and equality of outcomes in relation to these persons' dealings with public institutions.

4. As regards actions relating to voluntary return, the following, in particular, shall be eligible for support from the Fund:

(a) information and advisory services concerning voluntary return initiatives or programmes;

(b) information on the situation in the country or region of origin or former habitual residence;

(c) general or vocational training and help with reintegration;

(d) action by communities of origin resident in the European Union to facilitate the voluntary return of the persons referred to in this Decision;

(e) actions which facilitate the organisation and implementation of national voluntary return programmes.

5. Actions provided for by paragraph 1 to 4 shall, in particular, promote the implementation of the provisions of the relevant Community legislation in the field of the common European asylum system.

6. Actions shall take account of the specific situation of vulnerable persons such as minors, unaccompanied minors, disabled people, elderly people, pregnant women, single parents with minor children, and persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence.

Article 4

Actions of interest to the Community

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 ("Community actions") concerning asylum policy and measures applicable to the target groups referred to in Article 6.

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

(a) further Community cooperation in implementing Community law and good practices;

(b) support the setting-up of transnational cooperation networks and pilot projects based on transnational partnerships between bodies located in two or more Member States designed to stimulate innovation, facilitate exchanges of experience and good practice and improve the quality of return policy;

(c) support transnational awareness-raising campaigns;

(d) support studies, dissemination and exchange of information on best practices and all other aspects of the Fund, including on the use of state of the art technology;

(e) support pilot projects and studies exploring the possibility of new forms of Community cooperation and Community law in this area;

(f) support development of statistical tools, methods and common indicators.

3. The annual work programme laying down the priorities for Community actions shall be adopted in accordance with the procedure referred to in Article 51(2).

Article 5

Emergency Measures

1. In the event of temporary protection mechanisms within the meaning of Directive 2001/55/EC being implemented, the Fund shall also finance measures to help the Member States, such measures being separate from, and in addition to, the actions referred to in Article 3.

2. Eligible emergency measures shall concern the following types of action:

(a) reception and accommodation;

(b) provision of means of subsistence, including food and clothing;

(c) medical, psychological or other assistance;

(d) staff and administration costs linked to the reception of persons concerned and implementation of measures;

(e) logistical and transport costs.

Article 6

Target Groups

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

(1) any third-country national or stateless person having the status defined by the Geneva Convention of 28 July 1951 relating to the Status of Refugees and the 1967 protocol thereto and who is permitted to reside as refugee in one of the Member States;

(2) any third-country national or stateless person enjoying a form of subsidiary protection within the meaning of Council Directive 2004/83/EC[23];

(3) any third-country national or stateless person who has applied for one of the forms of protection described in points 1 and 2;

(4) any third-country national or stateless person enjoying temporary protection within the meaning of Directive 2001/55/EC.

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

CHAPTER II
PRINCIPLES OF ASSISTANCE

Article 7

Complementarity, consistency and compliance

1. The Fund shall provide assistance which complements national, regional and local actions, integrating into them the priorities of the Community.

2. The Commission and the Member States shall ensure that assistance from the Fund and the Member States is consistent with the activities, policies and priorities of the Community. This consistency shall be indicated in particular in the multiannual programme referred to in Article 19.

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

Article 8

Programming

1. The objectives of the Fund shall be pursued in the framework of two multiannual programming periods (2008-2010 and 2011-2013). The multiannual programming system shall include the priorities and a process of management, decision making, auditing and certification.

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

Article 9

Subsidiary and proportional intervention

[23] OJ L 304, 30.9.2004, p. 12.

1. Implementation of multiannual and annual programmes referred to in Articles 19 and 21 shall be the responsibility of Member States at the appropriate territorial level, in accordance with the institutional system specific to each Member State. This responsibility shall be exercised in accordance with this Decision.

2. The means employed by the Commission and the Member States shall vary according to the size of the Community contribution in relation to audit provisions. Differentiation shall also apply to provisions on evaluation and to the reports on multiannual and annual programmes.

Article 10

Implementation methods

1. The Community budget allocated to the Fund shall be implemented in accordance with Article 53 (1), point (b) of Council Regulation (EC, Euratom) No 1605/2002, with the exception of the Community Actions referred to in Article 4 and the technical assistance referred to in Article 16.

   The Member States and the Commission shall ensure compliance with the principle of sound financial management.

2. The Commission exercises its responsibility for implementing the general budget of the European Communities by:

   a) checking the existence and proper functioning of management and control systems in the Member States in accordance with the procedures described in Article 32;

   b) interrupting or suspending all or part of payments in accordance with Articles 41 and 42 if the national management and control systems fail, and by applying any other financial correction required, in accordance with the procedures described in Articles 45 and 46.

Article 11

Additionality

1. Contributions from the Fund shall not replace public or equivalent expenditure by a Member State.

2. The Commission shall, in cooperation with each Member State, verify additionality mid-term by 31 December 2012 and ex-post by 31 December 2015.

Article 12

Partnership

1. Each Member State shall organise, in accordance with current national rules and practices, a partnership with the authorities and bodies which it designates, namely:

   a) the competent regional, local, urban and other public authorities;

   b) any other appropriate body representing civil society, non-governmental organisations, including the social partners.

   Each Member State shall ensure broad and effective involvement of all the appropriate bodies, in accordance with national rules and practices.

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

   The partnership shall cover preparation, implementation, monitoring and evaluation of the multiannual programmes.

CHAPTER III
FINANCIAL FRAMEWORK

Article 13

Global resources

1. The financial reference amount for the implementation of the Fund from 1 January 2008 to 31 December 2013 shall be EUR 1.112,7 million.

2. The annual appropriations for the Fund shall be authorised by the budgetary authority within the limits of the financial perspectives.

3. The Commission shall make indicative annual breakdowns by Member States in accordance with the criteria established in Article 14.

Article 14

Annual distribution of resources for eligible actions in the Member States

1. Each Member State shall receive a fixed amount of EUR 300.000 from the Fund's annual allocation.

   This amount shall be fixed at EUR 500.000 per annum for the period 2008-2013 for the states which acceded to the European Union on 1 May 2004.

   This amount shall be fixed at EUR 500.000 per annum for Member States which will accede to the European Union in the period 2008 – 2013 for the remaining part of the period 2008 - 2013 from the year following their accession.

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

(a) 30% in proportion to the number of persons admitted in one of the categories referred to in Articles 6 (1) and (2) over the previous three years*;*

(b) *70*% in proportion to the number of persons referred to in Article 6 (3) and (4) registered over the previous three years.

3. The reference figures shall be the latest statistics produced by the Statistical Office of the European Communities in accordance with Community law on the collection and analysis of asylum data.

4. Where the statistics referred to in paragraph 3 are not available, Member States shall provide the necessary figures.

Article 15

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 Communities.

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

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

This may be increased to 60% for projects addressing specific priorities identified in the Commission multiannual guidelines as defined in Article 18.

This shall be increased to 75% in the Member States covered by the Cohesion Fund.

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

Article 16

Technical assistance at the initiative of the Commission

1. At the initiative of and/or on behalf of the Commission, 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, within the limits of 0,20% of the Fund's annual allocation.

2. Those actions shall include:

(a) studies, evaluations, expert reports and statistics, including those of a general nature concerning the operation of the Fund;

(b) measures aimed at the partners, the beneficiaries of assistance from the Fund and the general public, in particular information measures;

(c) the installation, operation and interconnection of computerised systems for management, monitoring, inspection and evaluation;

(d) improvements in evaluation methods and the exchange of information on practices in this field.

Article 17

Technical assistance of the Member states

1. At the initiative of the Member State in question, 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 annual amount set aside for technical assistance may not exceed 4 % of the total annual amount of co-financing allocated to the Member State, plus EUR 30 000.

CHAPTER IV
PROGRAMMING

Article 18

Adoption of strategic guidelines

1. For each multiannual programme, 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 asylum policy as well as the indicative distribution of the financial resources of the Fund for the period of the multiannual programme.

2. For each of the objectives of the Fund, those guidelines shall in particular give effect to the priorities of the Community with a view to promoting the implementation of the Common European Asylum System.

3. The Commission shall adopt the strategic guidelines relating to the first multiannual programming period (2008-2010) on 31 March 2007 at the latest, and those relating to the second multiannual programming period (2011-2013) on 31 March 2010 at the latest.

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

Article 19

Preparation and approval of national multiannual programmes

1. Each Member State shall for each programming period and on the basis of the strategic guidelines referred to in Article 18 propose a draft multiannual programme which shall include the following elements:

   (a) a description of the current situation in the Member State as regards arrangements for reception, asylum procedures, integration and voluntary return of the persons covered by Article 6;

   (b) an analysis of requirements in the Member State in question in terms of reception, asylum procedures, integration and voluntary return and an indication of operational objectives designed to meet these requirements during the period covered by the multiannual programme;

   (c) 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) indication of whether this strategy is compatible with other regional, national and Community instruments;

   (e) information on the priorities and their specific targets. Those targets shall be quantified using a limited number of indicators for implementation, results and impact, taking into account the proportionality principle. The indicators must make it possible to measure the progress in relation to the baseline situation and the effectiveness of the targets implementing the priorities;

   (f) a draft financing plan which sets out, for each priority and each year, the Fund's proposed financial contribution and the overall amount of public or private co-financing;

   (g) implementing provisions for the multiannual programme, including:

   - designation by the Member State of all the entities stipulated in Article 25;
   - a description of the implementation, monitoring, control and evaluation systems;
   - a definition of the procedures for the mobilisation and circulation of financial flows in order to ensure their transparency;
   - the provisions laid down to ensure that the multiannual programme is publicised;

2. The Member States shall establish each multiannual programme in close cooperation with the partners referred to in Article 12.

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

4. The Commission shall appraise the proposed multiannual programme in light of:

   (a) its consistency with the objectives of the Fund and the strategic guidelines defined in Article 18,

   (b) the relevance, appropriateness and expected results of the strategy and operational priority themes proposed by the Member State;

   (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 set out in this Decision;

   (d) its compliance with Community law and in particular with Community law aiming at ensuring the free movement of persons in conjunction with the directly related flanking measures with respect to external borders controls, asylum and immigration.

5. Where the Commission considers that a multiannual programme is inconsistent with the strategic guidelines or does not comply with the provisions of this decision setting out management and control arrangements, it shall request the Member State to revise the proposed programme accordingly.

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

Article 20

Revision of multiannual programmes

1. At the initiative of the Member State in question or the Commission, 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, particularly in the light of Council conclusions. Multiannual programmes may be re-examined in the light of evaluations and / or following implementation difficulties.

2. The Commission shall adopt a decision on the revision of the multiannual programme as soon as possible after the formal submission of a request by the Member State concerned.

Article 21

Annual programmes

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

2. The Commission shall provide the Member States, no later than 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 14.

3. The Member States shall submit to the Commission, no later than 1 November of each year, a draft annual programme for the following year, established in accordance with the multiannual programme and including :

   (a) the general rules for selection of projects to be financed under the annual programme;

   (b) a description of the tasks to be carried out by the responsible authority when implementing the annual programme;

   (c) the proposed financial breakdown of the Fund's contribution between the programme's various actions and an indication of the amount requested to cover technical assistance under Article 17 for the purpose of implementing the annual programme.

4. When examining the Member State's proposal, the Commission shall take account of the final amount of the appropriations allocated to the Fund under the budgetary procedure and shall adopt the decision on co-financing from the Fund no later than 1 March of the year in question. The decision shall indicate the amount allocated to the Member State and the period for which the expenditure is eligible.

Article 22

Special provisions concerning emergency measures

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

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

3. Available resources shall be distributed among the Member States on the basis of the number of persons benefiting from temporary protection in each Member State as referred to in Article 5(1).

CHAPTER V
MANAGEMENT AND CONTROL SYSTEMS

Article 23

Implementation

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

Article 24

General Principles in the management and control systems

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

(a) a clear definition of the functions of the bodies and / or departments concerned in management and control and a clear allocation of functions within each body;

(b) a clear separation of functions between bodies and departments concerned in management, certification of expenditure and control and between those functions within each body;

(c) adequate resources for each body and / or department to carry out the functions which have been allocated to it throughout the period of implementation of actions financed by the Fund;

(d) effective internal control arrangements of the responsible authority and any delegated authority;

(e) reliable accounting, monitoring and financial reporting systems in computerised form;

(f) effective system of reporting and monitoring where the performance of tasks is delegated;

(g) detailed manuals of procedures in relation to the functions to be performed;

(h) effective arrangements for the audit of the functioning of the system;

(i) systems and procedures to ensure a sufficient audit trail;

(j) procedures concerning the reporting and the monitoring of irregularities and the recover of amounts unduly paid.

Article 25

Designation of authorities

1. For each multiannual programme 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, which shall be responsible for the management of multi-annual and annual programmes supported by the Fund and shall handle all communication with the Commission ;

   (b) a certifying authority: national public authority or body operationally independent of any authorising department of the responsible authority, designated by the Member State to certify declarations of expenditure and applications for payment before they are sent to the Commission;

   (c) an audit authority: national public authority or body operationally independent of the responsible authority designated by the Member State and responsible for verifying the sound operation of the management and control system;

   (d) where appropriate, a delegated authority;

   (e) a compliance assessment body which shall be designated at the time of submission to the Commission of each draft multiannual programme. The Commission may accept the designated audit authority as the compliance assessment body where it has the necessary capacity and operational independence. It must carry out its work according to the international audit standards.

2. The Member State shall lay down rules governing its relations with those authorities and bodies and their relations with the Commission..

3. Subject to Article 24 (b), control and certification functions may be carried out by the same body or department.

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

Article 26

Responsible authority

1. The responsible authority may be a body of the Member State itself, a national public authority, as well as a body governed by the private law of the Member State and which has a public-service mission. Where the Member State designates a responsible authority which is not a body of the Member State itself, it shall lay down all the arrangements governing its relations with the said authority and the latter's relations with the Commission.

2. 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.

3. The Member State shall provide the responsible authority with adequate funding so that it can carry out its tasks properly and uninterruptedly throughout the period 2008-2013.

Article 27

Tasks of the responsible authority

1. The responsible authority shall have responsibility for efficient, effective and correct managing and implementation of the multiannual programme.

It shall in particular:

(a) consult relevant partners (non-governmental organisations, local authorities, competent international organisations, social partners etc.) through the partnership established in Article 12;

(b) submit to the Commission proposals for multiannual and annual programmes defined in Articles 19 and 21;

(c) organise and advertise calls for tenders and proposals;

(d) organise selection and award procedures for Fund co-financing in accordance with the principles of transparency, equal treatment and non-combination of grants;

(e) receive payments made by the Commission, and make payments to the beneficiaries;

(f) ensure consistency and complementarity between co-financing under the Fund and from other relevant national and Community financial instruments;

(g) verify the delivery of the co-financed products and services and that the expenditure declared for actions has actually been incurred and complies with Community and national rules;

(h) ensure that there is a system for recording and storing in computerised form detailed 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;

(i) ensure that beneficiaries and other bodies involved in the implementation of actions cofinanced by the Fund maintain either a separate accounting system or an adequate accounting code for all transactions relating to the operation;

(j) ensure that the evaluations of multiannual programmes referred to in Article 49 are carried out within the time limits laid down in this Decision and meet the quality standards agreed between the Commission and the Member State;

(k) set up procedures to ensure that all documents regarding expenditure and audits required to ensure an adequate audit trail are held in accordance with the requirements referred to in Article 43;

(l) ensure that the audit authority receives, for the purposes of carrying out the audits defined in Article 29(1) all necessary information on management procedures operated and the projects co-financed by the Fund;

(m) ensure that the certifying authority receives all necessary information on the procedures and audits carried out in relation to expenditure for the purpose of certification;

(n) draw up and submit to the Commission reports, statements of expenditure certified by the certifying authority and applications for payment ;

(o) carry out information and advisory activities; and disseminate results of supported actions;

(p) cooperate with the Commission and the responsible authorities in the other Member States.

2. The responsible authority's management activities for projects implemented in the Member States can be financed under the technical assistance arrangements referred to in Article 17.

Article 28

Delegation of tasks by the responsible authority

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

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

Article 29

Certifying authority

1. The certifying authority of a multiannual programme shall:

   (a) certify that:

   – the statement of expenditure is accurate, results from reliable accounting systems and is based on verifiable supporting documents,

   – 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 audits carried out in relation to expenditure included in statements 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) ensure the recovery of any Community financing found to have been unduly paid as a result of irregularities detected, together with interest where appropriate, keeping an account of amounts recoverable and repaying amounts recovered to the Commission, where possible by deducting them from the next statement of expenditure.

2. The certifying authority’s activities relating to projects implemented in the Member States can be financed under the technical assistance arrangements referred to in Article 17, provided that the prerogatives of this authority as described in Article 25 are respected.

Article 30

Audit authority

1. The audit authority of a multiannual programme shall :

   (a) ensure that audits are carried out in accordance with international audit standards to verify the effective operation of the management and control system of the multiannual programme;

   (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), the method to be used, the sampling method for audits on actions supported by the Fund and the indicative planning of audits to ensure 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….., …… and …… [24], or where common systems apply to two or more of these Funds, a single combined audit strategy may be submitted under point (c).

3. The audit authority shall draft a final report on the implementation of the annual programmes as defined in Article 50(2), 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 reporting any shortcomings found in the systems for the management and control of the programme.

   (b) an opinion as to whether the management and control system has functioned effectively to give a reasonable assurance on the correctness of the statements of expenditure presented to the Commission and the legality and regularity of the underlying transactions.

   (c) a declaration assessing the validity of the application for payment of the final balance and the legality and regularity of the underlying transactions covered by the final statement of expenditure.

4. Where the audits referred to in paragraph 1 are carried out by a body other than the audit authority, the audit authority shall ensure that such bodies have the necessary

[24] Insert references to decisions establishing the Return Fund, the External borders fund and the integration fund

operational independence and that the work is performed according to internationally accepted audit standards.

5. The activities of the audit authority or of the body referred to in paragraph 4 relating to projects implemented in the Member States can be financed under the technical assistance arrangements referred to in Article 17, provided that the prerogatives of this authority as described in Article 25 are respected.

CHAPTER VI
CONTROLS

Article 31

Responsibilities of the Member States

1. Member States shall be responsible for ensuring sound financial management of multiannual and annual programmes and the legality and regularity of underlying transactions.

2. They shall ensure that responsible authorities and any delegated authority, certifying authorities, audit authorities and any other bodies concerned receive adequate guidance on setting up the management and control systems referred to in Articles 24 to 30 to ensure that Community financing is used efficiently and correctly.

3. The Member States shall prevent, detect and correct irregularities. They shall notify these to the Commission, and keep the Commission informed of the progress in the administrative and legal proceedings.

   When amounts unduly paid to a beneficiary cannot be recovered, the Member State is responsible for reimbursing the amounts lost to the budget of the European Communities.

4. Member States shall be primarily responsible for the financial control of actions and shall ensure that management 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. Member States shall cooperate with the Commission for the collection of the statistics needed for the implementation of Article 14.

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

Article 32

Management and control systems

1. Prior to the adoption of a multiannual programme, the Member States shall ensure that management and control systems have been set up in accordance with

Articles 24 to 30. They shall be responsible for ensuring that the systems function effectively throughout the programming period.

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

3. Within three months of the submission to the Commission of each draft multiannual programme, Member States shall submit a report established by the compliance assessment body setting out the results of an assessment of the systems and giving an opinion on their compliance with Articles 24 to 30. In the event that the opinion contains reservations, the report shall indicate the shortcomings and their seriousness. Member States shall draw up, in agreement with the Commission, a plan setting out the corrective measures to be taken and the timetable for their implementation.

4. The detailed rules for implementing paragraphs 1 to 3 shall be adopted in accordance with the procedure referred to in Article 52(2).

Article 33

Responsibilities of the Commission

1. The Commission shall satisfy itself in accordance with the procedure laid down in Article 31 that Member States have set up management and control systems that comply with Articles 24 to 30, and on the basis of the annual audit reports and its own audits that the systems function effectively during the period of implementation of the multiannual programmes.

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

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

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.

Article 34

Cooperation with the control bodies of the Member States

1. The Commission shall cooperate with the audit authorities of multiannual programmes to coordinate their respective control plans and audit methods and shall immediately exchange the results of audits carried out on management and control systems in order to make the best possible use of control resources and to avoid unjustified duplication of work.

   The Commission shall provide its comments on the audit strategy presented under Article 30 not later than three months or at the first meeting following its reception.

2. In determining its own audit strategy, the Commission shall identify those multiannual programmes

   (a) which comply with the system established under Article 32 without reservations or for which reservations have been withdrawn following corrective measures; and

   (b) for which the audit strategy of the audit authority under Article 29 is satisfactory and where reasonable assurance has been obtained that the management and control systems function effectively on the basis of the results of audits by the Commission and the Member State.

   For those programmes, the Commission may inform the Member States concerned that it will rely principally on the opinion of the audit authority as to the correctness, legality and regularity of expenditure declared and will carry out its own on-the-spot audits only in exceptional circumstances.

CHAPTER VII
FINANCIAL MANAGEMENT

Article 35

Eligibility – declarations of expenditure

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

2. Expenditure shall correspond to the payments effected by the 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 Commission decision on co-financing indicated in Article 21(4). The co-financed actions must not have been completed before the starting date for eligibility.

4. The following expenditure shall not be eligible for a contribution from the Fund:

– VAT;

– interest on debt;

– the purchase of land for an amount exceeding 10% of the total eligible expenditure for the operation concerned;

– housing.

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

Article 36

Wholeness of payment to beneficiaries

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

Article 37

Use of the euro

All amounts mentioned in the financing decisions by the Commission, in the commitments and payments made by the Commission as well as the amounts of certified expenditure and requests for payment from the Member States shall be expressed and carried out in euro.

Article 38

Commitments

Community budgetary commitments shall be made annually on the basis of the Commission decision on co-financing referred to in Article 21(4).

Article 39

Payments - Prefinancing

1. Payments by the Commission of the contribution from the Funds 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 pre-financing payment representing 50% of the amount allocated in the Commission's annual decision on co-financing by the Fund shall be made to the Member State within sixty days following the adoption of the co-financing decision.

4. A second pre-financing payment shall be made no more than three months after the Commission has approved a progress report on implementation of the annual programme and a certified declaration of expenditure drawn up in accordance with Articles 29, point (a) and 35 accounting for at least 70% 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 co-financing decision or, in any event, 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. Interests generated by pre-financing payments shall be assigned to the programme concerned and must be deducted from the amount of public expenditure declared in the final statement of expenditure.

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

Article 40

Balance payments

1 The Commission shall pay the balance provided it has received the following documents within nine months from the end date of eligibility of costs defined in the annual decision on co-financing by the Fund:

(a) a certified declaration of expenditure and a request for payment of the balance or declaration of reimbursement duly drawn up in accordance with Articles 29, point a) and 35;

(b) the final implementation report for the annual programme, including the information set out in Article 51;

(c) the audit report, opinion and declaration provided for in Article 30(3) ;

(d) The payment of the balance is subject to the acceptance of the final implementation report and of the statement of validity for the request for payment of the balance.

2. If the responsible authority fail 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 appeal having suspensory effects are ongoing at Member State level at the time of submission of the documents defined in paragraph 1. The Member State shall, in the

partial final report submitted, give detailed information on such projects, and send reports on progress made with regard to these projects every 6 months. Within 3 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 be interrupted if the Commission has adopted a decision suspending payments of the co-financing for the relevant annual programme in accordance with the provisions of Article 41. The period shall start to run again from the date when the Commission decision referred to in Article 42(3) has been notified to the Member State.

5. Without prejudice to the provisions of Article 41, the Commission shall, within six months of receiving the documents referred to in paragraph 1, 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 the Member States.

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

Article 41

Interruption

1. The payment deadline shall be interrupted by the authorising officer by delegation within the meaning of Regulation (EC, Euratom) No 1605/2002 for a maximum period of six months if there are doubts as to the proper functioning of the management and control systems or if officer requires additional information from the national authorities in the process of monitoring the observations made under the annual review, or if s/he suspects that serious irregularities, detected or presumed, are present in the expenditure declared.

2. The Commission shall inform the Member State concerned and the responsible authority immediately of the reasons for the interruption. The Member State shall take the necessary steps to correct the situation as soon as possible.

3. The maximum period of six months shall be extended for another maximum period of six months if it proves necessary to adopt a decision in accordance with Articles 42 and 45.

Article 42

Suspension

1. All or part of the pre-financing and balance payments 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 statement 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 Article 31 and 32.

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

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

4. If the required measures are not taken by the Member State, the Commission may adopt a decision to reduce the net amount or cancel the Community contribution to the annual programme in accordance with Article 46.

Article 43

Conservation of documents

The responsible authority shall ensure that all the supporting documents regarding expenditure and audits on the annual programme concerned are kept available for the Commission and the Court of Auditors.

The documents shall be kept available at least for a period three years following the closure of an annual programme, without prejudice to the rules governing State aid. This period shall be interrupted either in the case of legal proceedings or at the request of the Commission stating the reasons.

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

CHAPTER VIII
FINANCIAL CORRECTIONS

Article 44

Financial corrections established by the Member States

1. Without prejudice to the Commission's responsibilities for implementing the general budget of the European Communities, the Member States shall be primarily responsible for investigating irregularities. They shall act upon evidence of any major change affecting the nature or the conditions for the implementation or control of assistance and make the required financial corrections.

2. The Member States shall make the financial corrections required in connection with the individual or systemic irregularities detected in actions or annual programmes. The corrections made by the Member States shall consist in recovering all or part of the Community contribution. The Member State shall take into account the nature and gravity of the irregularities and the financial loss to the Fund.

   Member States shall include in the annual report sent to the Commission under Article 50(2) a list of cancellation proceedings initiated for the annual programme concerned.

   The corrections made by the Member State shall consist in cancelling all or part of the Community contribution, and, 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 by Article 47(2).

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

Article 45

Audit of accounts and financial corrections by the Commission

1. Without prejudice to the powers of the Court of Auditors or the checks carried out by the Member States in accordance with national laws, regulations and administrative provisions, Commission officials or authorised Commission representatives may carry out on-the-spot checks, including sample checks, on the operations financed by the Fund and on management and control systems with a minimum of one working day’s 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 correctness of one or more transactions. Commission officials or servants may take part in such checks.

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

Article 46

Criteria for the corrections

1. If the Member State has not made the corrections within the period as provided for in Article 42(2) and if no agreement has been reached, the Commission may decide within three months to cancel all or part of the Community contribution to an annual programme when 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 statement of expenditure is irregular and has not been corrected by the Member State prior to the opening of the correction procedure under this paragraph; and

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

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

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

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

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

Article 47

Repayment

1. Any repayment due to be made to the Commission shall be effected before the due date indicated in the order for recovery drawn up in accordance with Article 72 of the Council Regulation (EC, Euratom) No 1605/2002[25]. 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 Communities, in force on the first calendar day of the month in which the due date falls, increased by three and a half percentage points.

Article 48

Obligations of Member States

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

CHAPTER IX
MONITORING, EVALUATION AND REPORTS

Article 49

Monitoring and evaluation

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

2. The Fund shall be evaluated regularly 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.

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

Article 50

Reports

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

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[25] OJ L 248, 16.9.2002.

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.

2. No later than nine months after the eligibility deadline for expenditure laid down in the co-financing decision for each annual programme, the responsible authority shall submit a final implementation report and a final declaration of expenditure to the Commission as provided by Article 35.

3. The Member States shall submit to the Commission no later than 30 June 2012 (for the period 2008-2010) and 30 June 2015 (for the period 2011-2013) respectively, an evaluation report on the results and impact of actions co-financed by the Fund.

4. The Commission shall submit to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions no later than 31 December 2012 for the period 2008-2010 and 31 December 2015 for the period 2011-2013 respectively, an ex post evaluation report.

Article 51

Final annual report

1. The reports referred to in Article 50(2) shall include the following information in order to obtain a clear view of the implementation of the annual and multiannual programmes:

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

   (b) the progress made in implementing the multiannual programme and its priorities in relation to their specific, verifiable targets, with a quantification, wherever and whenever they lend themselves to quantification, of the physical indicators and the indicators of implementation, results and impact for each priority concerned;

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

      – monitoring and evaluation measures, including data collection arrangements;

      – a summary of any significant problems encountered in implementing the operational programme and any measures taken;

      – the use made of technical assistance.

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

2. The reports shall be judged acceptable where they contain all the information listed in paragraph 1. The Commission shall reach a decision on the content of the annual report on implementation submitted by the responsible authority within two months. If the Commission does not respond within the time limit laid down, the report shall be deemed to be accepted.

CHAPTER IX
GENERAL AND **FINAL PROVISIONS**

Article 52

Committee

1. The Commission shall be assisted by the common Committee "Solidarity and Management of Migration flows", established by the Decision establishing the External Borders Fund for the period 2007-2013 as part of the General programme 'Solidarity and Management of Migration Flows' ../… (this Decision and the decisions ….., …… and …..)[26] ("the "committee").

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

3. The Committee shall adopt its Rules of Procedure.

Article 53

Review

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

Article 54

Transitional provisions

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

2. When adopting decisions on cofinancing under this Fund,, the Commission shall take account of measures adopted on the basis of Decision 2004/904/EC before the entry into force of this Decision which have financial repercussions during the period covered by that cofinancing.

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[26] Insert references to decisions establishing the Return Fund, the External borders fund and the integration fund

3. Sums committed for cofinancing approved by the Commission between 1 January 2005 and 31 December 2007 for which the documents required for closure of the programmes have not been sent to the Commission by the deadline for submitting the final report shall be automatically decommitted by the Commission no later than 31 December 2010, giving rise to the repayment of amounts unduly paid.

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

4. Member States shall submit to the Commission no later that 30 June 2009 an evaluation report on the results and impacts of actions cofinanced by the Fund concerning the period 2005-2007.

5. The Commission shall submit to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions no later than 31 December 2009, an intermediate report on the results achieved and on qualitative and quantitative aspects of implementation of the Fund for the period 2005-2007.

Article 55

Repeal

Decision 2004/904/EC is hereby repealed with effect from 1 January 2008.

Article 56

Application

This Decision shall apply from 1 January 2008.

Article 57

Addressees

This Decision is addressed to the Member States.

Done at Brussels,

For the European Parliament	*For the Council*
The President	*The President*

EXPLANATORY MEMORANDUM

1. DEVELOPING SOLIDARITY IN THE AREA OF EXTERNAL BORDERS AND VISA POLICY

1.1. Problem statement and analysis

Ensuring that controls on external borders are as effective as possible in preventing illegal entry is a precondition for the abolition of internal borders within the Schengen area. Once someone has entered the EU at a particular point he or she can then move virtually without restriction to other Member States, irrespective of his/her right to reside (elsewhere) in the EU. In consequence, every Member State in the Schengen area has an interest in the effectiveness with which other Member States control the external borders for which they are responsible, since they stand to be adversely affected through an unwanted influx of illegal migrants if this task is performed inefficiently. There is, therefore, a compelling argument for the adoption of common provisions at EC level in this regard and for establishing some means of ensuring minimum standards in the control of external borders, despite ultimate responsibility remaining with the Member States concerned. This is explicitly recognised in the Schengen Convention, which lays down common rules on entry of third-country nationals into the EU. As a consequence, Member States with external borders have had to adapt their border checks and surveillance to the standards and procedures decided at EU level and will continue to have to do so in coming years.

Comparatively few Member States have land and/or sea borders of any length or geopolitical importance which require close and detailed surveillance - these bear the brunt of the responsibility for controlling illegal immigration and for safeguarding internal security by controlling the crossing of external borders of the Schengen area. They also as a result bear a disproportionate share of the costs involved not only in preventing illegal entry but equally importantly of enabling those who are authorised to do so to enter without undue delay or inconvenience.

1.2. The way forward

Burden-sharing between Member States and the Union for the management of external borders is one of the five components of the common policy for the management of the external borders, as proposed by the Commission in its Communication of 7 May 2002 ‘Towards integrated management of the external borders of the Member States of the European Union (COM (2002) 233 final) and endorsed by the Council in its ‘Plan of the management of the external borders of the Member States of the European Union’ (Council Document 10019/02, 14 June 2002).

The European Council has, on several occasions, requested the creation of a Fund which supports the Member States who endure, for the benefit of the Community, a lasting and heavy financial burden in this respect. This is reflected in The Hague programme, adopted by the Council in November 2004 which underlines “the need for solidarity and fair sharing of responsibility including its financial implications between the Member States”.

1.3. The objectives of the Fund

The four main policy objectives to which the Fund shall contribute are:

- to improve the efficiency of controls and thereby the effectiveness of the management and protection of external borders in order to reduce illegal entry and increase the security of the internal EU area of free movement;

- to make it easier and faster for authorised travellers to enter the EU in conformity with the Schengen acquis while protecting the EU against illegal entry;

- to achieve a uniform application of the EU law by Member States and an overall efficiency of national border guards in carrying out their tasks in accordance with EU law;

- to enhance the efficiency of the issuing of visas and the implementation of other pre-frontier checks.

It is proposed that this Fund also supports actions relating to the common visa policy. An efficient visa management can be considered as a stage preliminary to external border control and would therefore constitute an integral part of a common integrated border management system in the EU, as suggested in the Hague Programme.

Under these objectives will also be incorporated aspects of two existing financial instruments: the 'Schengen Facility' and the 'Kaliningrad Facility'.

- According to Article 35(1) of the 2003 Act of Accession the 'Schengen Facility' has been created to support Estonia, Hungary, Latvia, Lithuania, Poland, the Slovak Republic and Slovenia to finance actions at the new EU external borders for the implementation of the Schengen acquis. The Facility ends in 2006.

- In accordance with Protocol no 5 of the Lithuanian Accession Treaty on the transit of persons by land between the region of Kaliningrad and other parts of the Russian Federation, Commission Decision C(2003) 5213 sets out the implementing arrangements with regard to the Special Kaliningrad Transit Programme 2004 – 2006.

The Kaliningrad Facility is replaced by specific provisions within the Fund. The responsibility of the Lithuanian authorities to correctly implement the Community legislation facilitating the transit is part of the burden of Lithuania to control the external borders of the EU, that Lithuania is taken up on behalf of all Member States and it is therefore better if a contribution is established within the framework of the external borders instrument than separately.

1.4. The complementarity with the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the EU ('Agency')

The Fund shall contribute to the above four objectives in complementarity with the further development of relevant legislation and the work of the Agency.

The Agency provides the Commission and the Member States with the necessary technical support and facilitates the application of existing and future Community measures on external borders. Consequently, the Fund shall only support actions by Member States at national level which contribute to the Community objectives and not actions relating to the co-operation with other Member States in the management of the external borders.

Moreover, the resources set aside under the Fund for actions of interest to the Community ('Community actions') will primarily relate to visa policy (objective no 4 under the Fund), a matter which does not fall under the competence of the Agency.

1.5. The scope of the actions and the definition of 'external borders'

As the Fund advocates solidarity in the implementation by Member States of the Schengen provisions on external borders, Member States are only eligible where they are bound by these provisions.

Article 3(1) of the Act of Accession states that the provisions of the Schengen acquis and the acts building upon it or otherwise related to it, listed in Annex I to the Act, will be binding on and applicable in the new Member States from the date of accession.[27] Provisions and acts not referred to in the Annex, while binding on the new Member States from the date of accession, will only apply in a new Member State pursuant to a Council decision to that effect taken in accordance with the article (Article 3(2) of the Act of Accession).

This is the two-stage implementation procedure, whereby certain provisions of the Schengen acquis are binding and applicable from the date of accession to the Union whereas others, specifically those linked intrinsically to the removal of checks at the internal borders, are binding from the date of accession but applicable in the new Member States only after the Council decision referred to above. The Schengen provisions on external borders (Articles 3 to 8 of the Schengen Convention and their implementing decisions, in particular the Common Manual) are listed in the Annex and are therefore binding on and applicable to the new Member States from the date of accession.[28]

Therefore, new Member States are eligible for support under this Fund as of its entry into force on the 1 January 2007, even if Council Decisions have yet to be taken with respect to the application of the Schengen provisions on removing checks on persons for one or more of the new Member States concerned. All should be eligible for support under this Fund in order to ensure as much as possible continuity with the Schengen Facility and the Transition Facility as regards the strengthening of external borders controls. Bearing in mind the consequence of the Council Decision(s) in question, the works to achieve the necessary control standards at the external borders of the new Member States should continue and the European Union should continue to support this preparation in the interest of the Community.

This reasoning has the following consequences:

- For the purpose of the annual calculation of the length of the external borders under the distribution key, all external borders with third countries not associated with the implementation, application and development of the Schengen acquis will be counted. Moreover, the temporary borders will be counted but only for the Member States which already fully implement the Schengen acquis. Consequently, only the temporary borders of Member States who carry out border controls also on behalf of other Member States are counted. This reflects the current situation, but it must be underlined that it is merely of a temporary nature, as the border controls are to be lifted completely as soon as possible. Indeed, as stated in the Hague Programme: "The European Council urges the Council, the

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[27] OJ L 236, 23.9.2003, p. 33.

[28] With the exception of Article 5(1)(d), related to the consultation of the Schengen Information System.

Commission and the Member States to take all necessary measures to allow the abolition of controls at internal borders as soon as possible, provided all requirements to apply the Schengen acquis have been fulfilled and after the Schengen Information System (SIS II) has become operational in 2007. Moreover, to underline further the provisional character of the temporary borders and to express the fact that the political priorities should be with supporting the 'definitive' borders, it is proposed that the temporary borders will not be given the same weight as the 'definitive' borders. To note that, by taking into account temporary borders of Member States fully implementing the Schengen acquis until the above-mentioned Council Decision(s) is/are adopted, for the purpose of the annual calculation under this Fund the length of the external land borders may exceed the length of the future definitive external borders of the Community.

- For the purpose of determining actions eligible under the Fund, all actions at temporary borders will be eligible, except when such actions amount to a structural investment incompatible with the objective of the lifting of controls on persons at these borders. This means that investments in construction, renovation or upgrading of border crossing infrastructures and related buildings and non-interoperable equipment will not be eligible.

In view of enhancing the cooperation at national level between services charged with the control of persons and those responsible for the control of goods (custom services) or for other policies (police cooperation, the fight against illegal immigration), the Fund may cover actions by Member States which improve the capacity of border guards in exercising their mission in this respect.

Complementarity with customs actions will also be ensured. Close cooperation between the authorities for control of persons and those responsible for control of goods will be of the utmost importance to ensure that no gaps are left at the external borders.

2. EVALUATIONS

The Commission carried out an ex ante evaluation, which is annexed to this proposal.

3. LEGAL BASIS AND RATIONALE OF THE POLICY INSTRUMENT

3.1. Choice of legal basis

The proposed legal base for this Council Decision is Article 62(2) because this legislation involves "measures on the crossing of the external borders of the Member States" and specifically "standards and procedures to be followed by Member Stats in carrying out checks on persons at such borders" (Article 62(2)(a)) and "rules on visas for intended stays of no more than three months, including (…) the procedures and conditions for issuing visas by Member States" (Article 62(2)(b) (ii)).

Because the proposal is based on Title IV of the EC Treaty (Visas, asylum, immigration and other policies related to free movement of persons), it must be presented and adopted in accordance with the protocols on the position of the United Kingdom, Ireland and Denmark, annexed to the Treaty of Amsterdam.

Under Article 6 of the protocol integrating the Schengen acquis into the framework of the European Union (Schengen protocol), Norway and Iceland are also associated with the

implementation and further development of the Schengen acquis. The consequences of the various protocols are examined in point 6 below.

3.2. Expressing solidarity in the allocation of the resources

Without prejudice to the specific calculation in regard to the burden of the Kaliningrad transit Scheme, the resources will be allocated to the Member States on the basis of a distribution key defining in general the relative burden of Member States in relation to integrated border management and the common visa policy.

When expressing solidarity between Member States in this area the following should be borne in mind:

- The fact that a basic minimum work load exists regarding the control and surveillance of external borders and the common visa policy for each Member State, based on a set of constant elements, namely the length of the external land borders, the length of the sea borders, the number of authorized border crossing points (land, air, sea) and the number of consular offices;

- The fact that for each Member State, more variable factors such as those relating to migratory flows, determine the actual daily 'work load' of the authorities, namely the number of persons crossing the external borders (land, air, sea); the number of third country nationals refused entry, the number of apprehended people and the number of visa applications (visas issued and visas refused).

That's why it is proposed that the distribution key will consist of two components: one related to the constant elements and one to more variable elements. The available resources would be broken down between the Member States as follows:

- 40 % in proportion to the constant elements and

- 60% in proportion to the variable elements.

It is proposed to introduce the possibility of weighing the constant elements into the legal base and in this regard to consult the FRONTEX Agency before decisions are taken.

Since the relevant data are those linked with people's flows and visas and variation of these flows are likely to occur, there must be an annual calculation. The combination of such criteria for the distribution of funds will ensure that evolutions (relating for example to changes in migratory pressure at certain border crossing points, changes of routes of illegal migration) are duly taken into account, allowing corrective action to be taken with the support of the Fund.

From the calculations on the basis of the distribution key are excluded the resources made available for the purpose of the Kaliningrad Transit Scheme. These resources are calculated on the basis of the foregone fees and the additional cost resulting from the Scheme.

3.3. Actions defined within the Fund

In view of the general objectives of the Fund of contributing to the implementation of effective control and surveillance of our external borders through the implementation of financial solidarity between the Community and the Member States, the Commission

proposes to implement the Fund mainly through shared management with the Member States and through decentralised management with countries associated with the implementation, application and development of the Schengen acquis (see point 6). This will allow for a financial support targeted in accordance with the specific situation and needs of each Member State and associated country.

Furthermore, to ensure the use of funds in the most efficient way, the proposal contains very detailed provisions as regards the operational objectives to be achieved as well as the types of actions identified as contributing to these objectives.

3.4. Programming, financial management and control systems

In accordance with the need to rationalise and harmonise management and control systems, the provisions of this proposal for a decision are aligned with the provisions proposed for the three other Funds under the general programme on "Solidarity and Management of Migration Flows". Programming is organised on a multiannual level, with two programming periods: 2007-2010 and 2011-2013, with annual programmes implementing the multiannual programmes.

4. SUBSIDIARITY AND PROPORTIONALITY

Subsidiarity

The fundamental principle remains that of Member States' responsibility for control and surveillance of their borders. With a view to the implementation of a 'common integrated border management system', the Fund explicitly supports the tasks performed by Member States also on behalf of all Schengen Member States. The actions to be supported must therefore clearly be identified, linked to objective conditions in individual states and bringing added value to the Community as a whole.

Proportionality

The decision will make it possible to provide financial support from the Fund to a list of actions which contribute operationally to a series of identified specific objectives, while leaving the Member States to select the actions and the way in which they are to be carried out under schemes agreed in conjunction with the Commission. The use of Community appropriations must also be subject to clear and uniform rules contained in a Council decision, which is the appropriate instrument for implementing Community programmes.

5. BUDGETARY IMPLICATIONS

The financial allocation for the Fund under the Financial Perspectives proposed by the Commission for the 2007-2013 period is EUR 2.152 million.

6. CONSEQUENCES OF THE VARIOUS PROTOCOLS ANNEXED TO THE TREATIES

United Kingdom and Ireland

According to Article 4 and 5 of the Protocol integrating the Schengen acquis into the framework of the European Union, "Ireland and the United Kingdom of Great Britain and Northern Ireland, which are not bound by the Schengen acquis, may at any time request to take part in some or all of the provisions of the acquis".

This proposal constitutes a development of provisions of the Schengen acquis, in which the United Kingdom and Ireland do not take part, in accordance with Council Decision 2000/365/EC of 29 May 2000[29] and the subsequent Council Decision 200/926/EC of 22 December 2004[30] concerning the request of the United Kingdom of Great Britain and Northern Ireland, and Council Decision 2002/192/EC of 28 February 2002 concerning Ireland's request to take part in some of the provisions of the Schengen acquis. The United Kingdom and Ireland are therefore not taking part in its adoption and are not bound by it or subject to its application.

Denmark

By the Protocol annexed to the Amsterdam Treaty on the position of Denmark, Denmark does not take part in the adoption by the Council of measures pursuant to Title IV of the EC Treaty, with the exception of "measures determining the third countries whose nationals must be in possession of visas when crossing the external borders, or measures relating to a uniform format for visas" (former Article 100c of the EC Treaty).

As this proposal constitutes a development of the Schengen acquis and following Article 5 of the Protocol, "Denmark shall decide within a period of 6 months after the Council has decided on a proposal or initiative to build upon the Schengen acquis under the provisions of Title IV of the Treaty establishing the European Community, whether it will implement this decision in its national law".

Norway and Iceland

In accordance with Article 6 first indent of the Schengen Protocol, an agreement has been signed on 18 May 1999 between the Council, Norway and Iceland in order to associate those two countries with the implementation, application and development of the Schengen acquis[31].

Article 1 of this agreement stipulates that Norway and Iceland are associated with the activities of the EC and the EU in the areas covered by the provisions referred to in Annexes A (provisions of the Schengen acquis) and B (provisions of acts of the European Community, which have replaced corresponding provisions of, or adopted pursuant to, the Schengen Convention) of the agreement as well as by those which will follow from them.

According to Article 2 of the agreement, the provisions of all acts or measures taken by the European Union amending or building upon the integrated Schengen acquis (Annex A, B) shall be implemented and applied by Norway and Iceland.

The present proposal builds upon the Schengen acquis as defined in Annex A of the agreement.

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29 OJ L 131, 1.6.2000, p. 43.
30 OJ L 395, 31.12.2004, p. 70.
31 OJ L 176, 10.7.99, p. 35

As a consequence its has to be discussed in the "Mixed Committee" as provided for in Article 4 of the Agreement to give the possibility to Norway and Iceland "to explain the problems they encounter in respect of" the measure and "to express themselves on any questions concerning the development of provisions of concern to them or the implementation thereof".

Switzerland

As regards Switzerland, this proposal constitutes a development of the provisions of the Schengen acquis within the meaning of the Agreement signed by the European Union, the European Community and the Swiss Confederation on the latter's association with the implementation, application and development of the Schengen acquis which fall within the area referred to in Article 4(1) of Council decision 2004/860/EC on the signing, on behalf of the European Community, and on the provisional application of certain provisions, of that Agreement[32].

The Agreement with Switzerland, signed on 26.10.2004, provides for provisional application of certain provisions upon signature, in particular the participation of Switzerland in the Mixed Committee dealing with the development of the Schengen acquis.

[32] OJ L 370, 17.12.2004, p. 78.

2005/0047 (COD)

Proposal for a

DECISION OF THE EUROPEAN PARLIAMENT AND THE COUNCIL

establishing the External Borders Fund for the period 2007-2013 as part of the general programme 'Solidarity and Management of Migration Flows'

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 62, paragraph 2 thereof,

Having regard to the proposal from the Commission[33],

Having regard to the opinion of the European Economic and Social Committee[34],

Having regard to the opinion of the Committee of the Regions[35]

Acting in accordance with the procedure laid down in Article 251 of the Treaty[36],

Whereas:

(1) While each Member State contributes to a high and uniform level of control on persons and surveillance of the external borders of the European Union within the framework of common rules,some Member States face a heavier burden than others.

(2) The difference of the burden is explained by the different situations prevailing in Member States as regards the geography of the external border, the number of authorised and operative border crossing points, the level of migratory pressure, both legal and illegal, the risks and threats encountered and finally the workload of the national services regarding the examination of visas applications and the issuing of visas.

(3) Burden-sharing between Member States and the Union for the management of external borders is one of the five components of the common policy for the management of the external borders, as proposed by the Commission in its Communication of 7 May 2002 'Towards integrated management of the external borders of the Member States of the European Union37 and endorsed by the Council in its 'Plan of the management of the external borders of the Member States of the European Union'38.

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33 OJ C …
34 OJ C …
35 OJ C …
36 OJ…
37 COM(2002) 23.
38 Council Document 10019/02, 14 June 2002.

(4) While the Council Regulation (EC) No 2007/2004 of 26 October 2004 establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union39 (hereafter referred to as "the Agency")constitutes an important step towards the progressive development of the operational dimension of the common integrated border management system, the implementation of effective and common standards for control and surveillance of the external borders calls for a Community financial solidarity mechanism in order to support the Member States who endure, for the benefit of the Community, a lasting and heavy financial burden.

(5) The External Borders Fund (hereafter referred to as "the Fund") should express solidarity through financial assistance to those Member States who apply the Schengen provisions on external borders.

(6) Such financial assistance should be modulated in such a way to be at the same time a bridge with the past financial contributions of the European Union to the Member States who at the time of entry into force of this Decision do not yet apply all parts of the provisions of the Schengen acquis, without, however, constituting a mere continuation of the actions funded previously from other sources covered by the general budget of the European Union. In such cases, the Fund should assist those Member States preparing for full participation which, in the spirit of the Hague Programme, should happen as soon as possible.

(7) Moreover, the Fund should take into account specific situations, such as the transit by land of third country nationals who must necessarily cross the territory of one or several Member States in order to travel between two parts of their own country which are not geographically contiguous, not only in the own interest of the Member State(s) concerned but of all Member States which have abolished checks at their internal borders. In such cases, the actions to be financed should be exhaustively defined and the allocations of resources should be determined on the basis of a factual assessment of the needs in relation to these actions.

(8) The Fund should include support for national measures and co-operation between Member States in the area of visa policy and other pre-frontier activities, taking place in a stage, which is preliminary to external border controls. An efficient management of activities organised by the consular services of the Member States in third countries is in the interest of the common visa policy as part of a multi-layered system aimed at facilitating legitimate travel and tackling illegal immigration for the European Union and constitutes an integral part of the common integrated border management system.

(9) Objective criteria should be established to allocate the funds to the Member States. These criteria should take into account constant elements which determine the actual starting point of a Member State as regards its obligations pursuant to the provisions of the Schengen acquis, and more variable elements, which express the work load of national authorities. Certain constant elements, could, however be weighted, inter alia to take into account the risks and threats at external borders, the relative work load at consular offices or the size of the passenger flows at authorized border crossing points. Here, the Agency could be requested to provide assistance.

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39 OJ L 349, 25.11.2004, p. 1.

(10) In view of the mission of the Agency to assist Member States in implementing the operational aspects of external border management and in order to develop complementarity between its mission and the responsibilities of the Member States for the control and surveillance of external borders, the Agency should be consulted by the Commission on draft multiannual programmes submitted by the Member States and on the strategic guidelines prepared by the Commission.

(11) Moreover, the Commission may request the Agency to provide input in the assessment by the Commission of the impact of the Fund on the development of the policy and legislation on external border control, the synergies between the Fund and the tasks of the Agency, as well as the appropriateness of the criteria to allocate the funds between the Member States in light of the objectives pursued by the European Union in this area.

(12) This instrument is designed to form part of a coherent framework entitled the General programme 'Solidarity and Management in Migration Flows', which aims at addressing the issue of a fair share of 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 immigration, as developed in accordance with Title IV of the Treaty establishing the European Community.

(13) The participation in this instrument by a Member State should not coincide with its participation in a future temporary instrument designed to help beneficiary Member States to finance actions at new external borders of the Union for the implementation of the Schengen acquis and external border control.

(14) The support provided by the Fund would be more efficient and better targeted if co-financing of eligible actions was based on strategic multiannual programmes and on related annual work programmes drawn up by each Member State in cooperation with the Commission.

(15) On the basis of the strategic guidelines adopted by the Commission, each Member State should prepare a multiannual programming document taking into account its situation and needs and setting out its development strategy, which is negotiated and decided by the Commission, and constitutes the framework for preparing the annual programmes.

(16) Multiannual programming should be directed towards achieving the Funds' objectives by ensuring the availability of the necessary financial resources and the consistency and continuity of joint action by the Community and the Member States.

(17) Multiannual programming should ensure coordination of the Fund with other financial instruments.

(18) In accordance with the implementation methods as referred to in Article 53(1), point (b) of the Council Regulation (EC, Euratom), No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European

Communities40, the conditions allowing the Commission to exercise its responsibilities for implementation of the general budget of the European Communities should be specified and the obligations for the cooperation of the Member States clarified. Applying these conditions will 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 of the Financial Regulation.

(19) The Commission should establish the indicative breakdown of available commitment appropriations using an objective and transparent method.

(20) Under technical assistance, the Fund should provide support for evaluations, improvement of administrative capacity linked to the management of the Fund, studies, pilot projects and exchanges of experience intended, in particular, to encourage innovative approaches and practices.

(21) Member States should adopt adequate measures to guarantee the proper functioning of the management and control system. To this end, it is necessary to establish the general principles and necessary functions which all programmes shall fulfil.

(22) It is necessary to provide for the designation of a single responsible authority in each Member State for the management of the Fund's interventions and to clarify its responsibilities. Designation and the functions of the audit authority should be also foreseen. In addition, in order to guarantee uniform quality standards concerning the certification of expenditures before their transmission to the Commission and to clarify the nature and quality of the information on which declarations of expenditure are based it is necessary to provide for the designation of the certification authority.

(23) In accordance with the principles of subsidiarity and proportionality, Member States have the primary responsibility for the implementation and control of the interventions.

(24) 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 to guarantee the efficient and correct implementation of their multiannual and annual programmes. In particular, as far as management and control are concerned, it is necessary to establish the modalities by which Member States ensure that the systems are in place and function satisfactorily.

(25) Without prejudice to the Commission's powers as regards financial control, cooperation between the Member States and the Commission in this field should be increased and the criteria should be established which allow the Commission to determine, in the context of its strategy of control of national systems, the level of assurance it can obtain from national audit bodies.

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40 OJ L 248, 16.9.2002, p. 1.

(26) The effectiveness and impact of actions supported by the Fund also depend on their evaluation. The responsibilities of the Member States and the Commission in this regard, and arrangements to ensure the reliability of evaluation, should be formalised.

(27) 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.

(28) This Decision establishes a financial framework for the entire duration of the programme, which is to be the principal point of reference for the budgetary authority within the meaning of point 33 of the interinstitutional agreement of 6 May 1999 between the European Parliament, the Council and the Commission on budgetary discipline and improvement of the budgetary procedure.41

(29) Since the objectives of this Decision, namely to support the establishment of a common integrated border management system and the management of activities organised by consular services in third countries, cannot be sufficiently achieved by the Member States and can therefore by reason of the scale and effects of the action be better achieved at Community level, the Community may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Decision does not go beyond what is necessary to achieve this objective.

(30) 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.42

(31) As regards Iceland and Norway, this Decision constitutes a development of the Schengen acquis within the meaning of the Agreement concluded by the Council of the European Union and the Republic of Iceland and the Kingdom of Norway concerning the association of those two States with the implementation, application and development of the Schengen acquis, which fall within the area referred to in Article 1, Point A and B of Council Decision 1999/437/ ECon certain arrangements for the application of the Agreement43.

(32) As regards Switzerland, this Decision constitutes a development of the provisions of the Schengen acquis within the meaning of the Agreement signed by the European Union, the European Community and the Swiss Confederation on the latter's association with the implementation, application and development of the Schengen acquis which fall in the area referred to in Article 1(A) of Decision 1999/437/EC read in conjunction with Article 4(1) of Council Decision 2004/860/EC on the signing, on behalf of the European Community, and on the provisional application of certain provisions of the Agreement44.

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41 OJ C 172, 18.6.1999, p. 1.
42 OJ L 184, 17.7.1999, p. 23.
43 OJ L 176, 10.7.1999, p. 31.
44 OJ L 370, 17.12.2004. p. 78.

(33) In order to determine the supplementary rules necessary for the implementation of this instrument, an agreement should be concluded between the Community and the above-mentioned associated states.

(34) In accordance with Articles 1 and 2 of the Protocol on the position of Denmark, annexed to the Treaty on European Union and the Treaty establishing the European Community, Denmark is not taking part in the adoption of this Decision and is not bound by it or subject to its application. Given that this Decision builds upon the Schengen acquis under the provisions of Title IV of Part Three of the Treaty establishing the European Community, Denmark should, in accordance with Article 5 of the said Protocol, decide within a period of six months after the Council has adopted this Decision whether it will implement it in its national law or not.

(35) This Decision constitutes a development of the provisions of the Schengen acquis in which the United Kingdom does not take part, in accordance with Council Decision 2000/365/EC of 29 May 2000 and the subsequent Council Decision 2004/926/EC of 22 December 2004 concerning the request of the United Kingdom of Great Britain and Northern Ireland to take part in some of the provisions of the Schengen acquis45. The United Kingdom is therefore not taking part in its adoption and is not bound by it or subject to its application.

(36) This Decision constitutes a development of the provisions of the Schengen acquis in which Ireland does not take part, in accordance with Council Decision 2002/192/EC of 28 February 2002 concerning Ireland's request to take part in some of the provisions of the Schengen acquis46. Ireland is therefore not taking part in its adoption and is not bound by it or subject to its application.

HAVE ADOPTED THIS DECISION:

CHAPTER I
SUBJECT MATTER, OBJECTIVES AND ACTIONS

Article 1

Subject matter and scope

This decision establishes for the period from 1 January 2007 to 31 December 2013 the European External Borders Fund, hereinafter referred to as « The Fund », as part of the General programme "Solidarity and Management of Migration Flows", in order to contribute to the strengthening of the area of Freedom, Security and Justice.

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.

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45 OJ L 131, 1.6.2000, p. 43.

46 OJ L 64, 7.3.2002, p. 20.

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

Article 2

Definitions

For the purpose of this Decision:

(a) 'external borders' means the external borders of the Member States, whether they are temporary or not;

(b) 'temporary borders' means

– the common border between a Member State fully implementing the Schengen acquis and a Member State bound to apply the Schengen acquis in full, in conformity with its Act of Accession, but for which the Council Decision authorising them to fully apply that acquis has not entered into force;

– the common border between two Member States bound to apply the Schengen acquis in full, in conformity with its Act of Accession, but for which the Council Decision authorising them to fully apply that acquis has not entered into force;

(c) 'Agency' means the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union as established by Council Regulation (EC) No 2007/2004;

(d) 'common integrated border management system' means the development and implementation by the competent authorities of a Member State of a coherent approach to the allocation of human resources, equipment and technology at their disposal for the uniform and systematic application of the rules of the European Union in view of providing a high level of external border security through control and surveillance tasks. The approach shall be in accordance with the rules of the European Union and based on a systematic gathering of intelligence with respect to situations on the ground before, at and behind the external borders of a Member State, taking into account the common risk analysis, as established by the Agency.

Article 3

General Objectives

1. The Fund shall contribute to the following objectives:

(a) implementation in the Member States of the common integrated border management system for the control and surveillance of the external borders;

(b) efficient management of the flows of persons at the external borders by the Member States, in order to ensure, on the one hand, a high level of protection at the external borders for the internal security and, on the other, a smooth crossing of the external borders by bona fide travellers in conformity with the Schengen acquis;

(c) uniform application of the law of the European Union by the Member States and overall efficiency of national border guards in the carrying out of their tasks in accordance with the law of the European Union at the external borders;

(d) improvement of the management of activities organised by the consular services of the Member States in third countries and the co-operation between Member States thereof.

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

Article 4

Specific objectives

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

(a) Implementation of the recommendations, operational standards and best practices, as defined by the Agency;

(b) Development and application of the measures necessary to improve surveillance systems between authorised border crossing points;

(c) Introduction of measures or development of effective systems enabling a methodical gathering of intelligence with respect to the evolving situation on the ground before, at and behind the external borders;

(d) Ensuring adequate registration of the number of persons crossing at all types of external borders (land, air, sea);

(e) Introduction or upgrading of a reliable and high quality system of collection of statistical and administrative data with respect to the categories of travellers, the number and nature of checks and surveillance measures at the different types of external borders, based on registration and other sources for data collection;

(f) Setting up of an effective, structural, strategic and operational coordination between all the national authorities operating at border crossing points;

(g) Improvement of the capacity and the qualifications of national border guards in executing their surveillance and control tasks;

(h) Improvement of the information exchange at national level between authorities responsible for external borders management and other relevant, competent authorities;

(i) Promotion of the quality management standards for each activity executed at the external borders.

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

(a) Except for temporary borders, setting up of the systematic controls of persons on entry and exit at border crossing points, in particular through new working methods, logistical measures and state of the art technology;.

(b) Promotion of the use of technology and specialised training for the staff responsible for its effective exploitation;

(c) Promotion of the exchange of information and improvement of training on forged travel documents, including the development of common tools and practices for detection of such documents;

(d) Promotion of efficient, real time consultation of data at border crossing points through the use of large scale IT systems, such as SIS and VIS, and an effective exchange of information between all the border crossing points along the external borders in real time;

(e) Ensuring the rapid and smart implementation at operational and technical level of risk analysis results produced by the Agency.

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

(a) Gradual establishment in each Member State of the uniform education, training and qualifications of the border guards, particularly by implementing the common core curriculum for training as developed by the Agency and by supplementing in a coherent way the activities of the Agency in this field;.

(b) Support and increase of the exchange and secondment of border guards between Member States, in accordance with the guidelines and activities of the Agency in this area;

(c) Promotion of the use of similar or equivalent state of art technology along the external borders, whenever this is indispensable for the correct, effective or uniform respect of the rules.

(d) Promotion of the capacity of national authorities to apply the same procedures and to take uniform, rapid and high quality decisions on visa issues as well as on the right to enter;

(e) Enhancing and improving of the conditions in detention areas in airports and sea ports;

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

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

(a) Reinforcement of the operational capacity of the network of the immigration liaison officers and promote a more effective co-operation through the network between the Member States' services.

(b) Introduction of measures with respect to flights likely to result in illegal arrivals at the external borders of the Member States;

(c) Promotion of a more effective cooperation with carriers in the airports of the countries of departure, including, inter alia, a uniform training of the carriers' staff on the travel documents;

(d) Promotion of co-operation between Member States in enhancing the capacity of consular services to investigate visa applications;

(e) Promotion of common investigative practices, uniform administrative procedures and decisions on visa by the consular services of a Member State located in different third countries;

(f) Promotion of progress towards a systematic and regular cooperation between the consular and other services of different Member States, including pooling of resources and means for visa issuance, exchange of information, surveys and investigations concerning visa applications and the development of a common visa application centre;

(g) Promotion of national initiatives aiming at common investigative practices, uniform administrative procedures and decision making on visa issuing by the consular services of different Member States;

(h) Development of common consular offices according to the policy evolution in this field.

Article 5

Eligible actions in the Member States

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

   (a) Border crossing infrastructures and related buildings, such as border stations, helicopter landing places or lanes or booths for the queuing of vehicles and persons at border crossing points;

   (b) Infrastructures and buildings required for surveillance between border crossing points;

   (c) Operating equipment, such as laboratory equipment, document examination instruments detection tools, mobile or fixed terminals for consulting SIS and national systems, terminals for reception of satellite signals and others;

   (d) Means of transport for the surveillance of external borders, such as vehicles, vessels, helicopters, and light aircrafts, specially equipped with electronic equipment for the surveillance of the border and the detection of persons in trucks;

   (e) Equipment for real time exchange of information between relevant authorities;

   (f) ICT systems;

   (g) Programmes for the detachment and exchange between Member States of staff such as border guards, immigration officers and consular officers

   (h) Training and education of staff in relevant authorities;

   (i) Investments in the development, testing and instalment of state of the art technology;

   (j) Studies and pilot projects implementing recommendations, operational standards and best practices, as defined by the Agency;

   (k) Studies and pilot projects designed to stimulate innovation, facilitate exchanges of experience and good practice and improve the quality of the management of activities organised by the consular services of the Member States in third countries.

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

Article 6

The Kaliningrad Facility Scheme

1. The Fund shall support foregone fees from transit visas and additional costs incurred in implementing the FTD and FRTD scheme in accordance with Council Regulation (EC) No 693/2003[47] and Council Regulation (EC) No 694/2003[48].

2. For the purpose of paragraph 1, additional costs means cost which result directly from the specific requirements of implementing the operation of a special transit scheme and which are generated as a result of issuing of transit or other visas.

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

   (a) Investment of infrastructures

   (b) Training of border guards and rail staff

   (c) Additional operational cost, including the salaries for the staff specifically implementing the operation of a special transit scheme.

3. The foregone fees provided for in paragraph 1 shall be calculated on the basis of the level of fees for transit visas established in Annex 12 to the Common Consular Instructions on visas.

Article7

Actions of interest to the Community

1. At the Commission's initiative, up to 2% of the Fund's available resources may be used to finance transnational actions or actions of interest to the Community as a whole ('Community actions') concerning the general objective of contributing to enhancement of the activities organised by the consular services of the Member States in third countries and the co-operation between Member States thereof and the objective of promoting the progressive inclusion of the customs, veterinary, phyto-sanitary controls in integrated border management activities according to the policy evolution in this field.

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

   (a) Further Community cooperation in implementing Community law and good practices;

   (b) Support the setting-up of transnational cooperation networks and pilot projects based on transnational partnerships between consular services located in two or more Member States designed to stimulate innovation, facilitate exchange of experience and good practice;

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47 OJ L 99, 17.4.2003, p. 8.
48 OJ L 99, 17.4.2003, p. 15.

(c) Support studies, dissemination and exchange of information, including on the use of state of art technology, on best practices and all other aspects of the general objective of contributing to enhancement of the activities organised by the consular services of the Member States in third countries and the co-operation between Member States thereof;

(d) Support projects and studies exploring the possibility of new forms of Community cooperation and Community law in this area;

(e) Support the development of statistical tools, methods and common indicators.

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 8

Complementarity, consistency and compliance

1. The Fund shall provide assistance which complements national, regional and local actions, integrating into them the priorities of the Community.

2. The Commission and the Member States shall ensure that assistance from the Fund and the Member States is consistent with the activities, policies and priorities of the Community. This consistency shall be indicated in particular in the multiannual programme referred to in Article 20.

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

Article 9

Programming

1. The objectives of the Fund shall be pursued in the framework of two multiannual programming periods (2007-2010 and 2011-2013). The multiannual programming system shall include the priorities and a process of management, decision making, auditing and certification.

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

Article 10

Subsidiary and proportional intervention

1. Implementation of multiannual and annual programmes referred to in Articles 20 and 22 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. The means employed by the Commission and the Member States shall vary according to the size of the Community contribution in relation to audit provisions. Differentiation shall also apply to provisions on evaluation and to the reports on multiannual and annual programmes.

Article 11

Implementation methods

1. The Community budget allocated to the Fund shall be implemented, in accordance with Article 53, paragraph 1, point (b) of Council Regulation (EC, Euratom) No 1605/2002[49], with the exception of the Community Actions referred to in Article 7 and the technical assistance referred to in Article 17.

   The Member States and the Commission shall ensure compliance with the principle of sound financial management.

2. The Commission exercises its responsibility for implementing the general budget of the European Communities by:

   (a) checking the existence and proper functioning of management and control systems in the Member States in accordance with the procedures described in Article 32;

   (b) interrupting or suspending all or part of payments in accordance with Articles 41 and 42 if the national management and control systems fail, and by applying any other financial correction required, in accordance with the procedures described in Articles 45 and 46.

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

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

Article 12

Additionality

1. Contributions from the Fund shall not replace public or equivalent expenditure by a Member State.

2. The Commission shall, in cooperation with each Member State, verify additionality mid-term by 31 December 2012 and ex-post by 31 December 2015.

[49] OJ L 248, 16.9.2002, p. 1.

Article 13

Partnership

1. Each Member State shall organise, in accordance with current national rules and practices, a partnership with the authorities and bodies which it designates, namely:

   (a) the competent regional, local, urban and other public authorities;

   (b) any other appropriate body representing civil society, non-governmental organisations, including the social partners.

2. Each Member State shall ensure broad and effective involvement of all the appropriate bodies, in accordance with national rules and practices.

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

4. The partnership shall cover preparation, implementation, monitoring and evaluation of the multiannual programmes.

CHAPTER III
FINANCIAL FRAMEWORK

Article 14

Global resources

1. The financial reference amount for the implementation of the Fund from 1 January 2007 to 31 December 2013 shall be EUR 2.152 million.

2. The annual appropriations for the Fund shall be authorised by the budgetary authority within the limits of the financial perspectives.

3. The Commission shall make indicative annual breakdowns by Member States in accordance with the criteria established in Article 15.

Article 15

Annual distribution of resources for eligible actions in the Member States

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

   (a) 40% in proportion to objective factors defining the starting position of Member States as regards border management and the management of visa policy at consular offices over the last year; and

(b) 60% in proportion to the total number of persons affected and decisions taken by Member States applying the law of the European Union as regards border management and the management of visa policy at consular offices over the last year.

2. The component under paragraph 1 (a) shall take into account the following factors: the length of the external land borders, the length of the external maritime borders, the number of authorized border crossing points and the number of consular offices.

3. These factors should be weighed inter alia according to

– the nature of the external borders and the concomitant degree of difficulty to carry out surveillance;

– the size of the passenger flows at authorized border crossing points, affecting the ability to ensure an efficient management of flows;

– the number of visa applications at consular offices;

– the level of risk and threats encountered at external borders, taking into account the risk analyses carried out by the Agency on the basis of a common integrated risk analysis model;

– the specific situation of particular areas facing a high level of illegal immigration pressure.

4. With respect to the length of the external land borders as referred to in paragraph 2, the calculation shall not take into account temporary borders, except for the temporary borders of the Member States fully implementing the Schengen acquis. However, for these temporary borders a 65% weighting shall be applied in relation to the other external land borders.

5. The component under paragraph 1(b) shall take into account the following factors: the number of persons crossing authorised border crossing points, the number of third country nationals refused entry at the external borders, the number of apprehended people and the number of visa applications.

6. The reference figures for passenger flows and the number of third country nationals refused entry at the border by Member States are the latest statistics produced by the Statistical Office of the European Communities in accordance with Community law.

7 Where the statistics referred to in paragraph 6 are not available, Member States shall provide the necessary figures.

8. A weighting of the constant factors shall be adopted in accordance with the procedure referred to in Article 52(2).

9. The allocation of resources referred to in paragraph 1 shall not include the resources allocated for the purpose of Article 6. These resources shall not exceed 15 million EUR and the actions concerned shall not exceed 75% of the total cost referred to under Article 6(3).

Article 16

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 Communities.

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 60% for projects addressing specific priorities identified in the Commission multiannual guidelines as defined in Article 18.

   This shall be increased to 75% in the Member States covered by the Cohesion Fund.

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

Article 17

Technical assistance at the initiative of the Commission

1. At the initiative of and/or on behalf of the Commission, 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, within the limits of 0,20% of the Fund's annual allocation.

2. Those actions shall include:

   (a) studies, evaluations, expert reports and statistics, including those of a general nature concerning the operation of the Fund;

   (b) measures aimed at the partners, the beneficiaries of assistance from the Fund and the general public, in particular information measures;

   (c) the installation, operation and interconnection of computerised systems for management, monitoring, inspection and evaluation;

   (d) improvements in evaluation methods and the exchange of information on practices in this field.

Article 18

Technical assistance of the Member states

1. At the initiative of the Member State in question, 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 annual amount set aside for technical assistance may not exceed 4 % of the total annual amount of co-financing allocated to the Member State, plus EUR 30 000.

CHAPTER IV
PROGRAMMING

Article 19

Adoption of strategic guidelines

1. For each multiannual programme, 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 external borders and visa policy as well as the indicative distribution of the financial resources of the Fund for the period of the multiannual programme.

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

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

4. The Commission shall adopt the strategic guidelines relating to the first multiannual programme (2007-2010) at the latest on 31 March 2006, and those relating to the second multiannual programming period (2011-2013) at the latest on 31 March 2010.

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

Article 20

Preparation and approval of national multiannual programmes

1. Each Member State shall for each programming period, on the basis of the strategic guidelines referred to in Article 19 propose a draft multiannual programme which shall include the following elements:

   (a) a description of the current situation in the Member State as regards the infrastructure, equipments, means of transport, ICT systems and arrangements for the training and education of staff at the service of respectively the border authorities and consular authorities;

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

   (c) a presentation of an appropriate strategy to achieve these objectives and the priority attached to their attainment, and a description of the actions envisaged to implement these priorities;

   (d) an indication of whether this strategy is compatible with other regional, national and Community instruments;

   (e) information on the priorities and their specific targets. Those targets shall be quantified using a limited number of indicators for implementation, results and impact, taking into account the proportionality principle. The indicators must make it possible to measure the progress in relation to the baseline situation and the effectiveness of the targets implementing the priorities;

   (f) a draft financing plan which sets out, for each priority and each year, the Fund's proposed financial contribution and the overall amount of public or private co-financing;

   (g) implementing provisions for the multiannual programme, including:

   – designation by the Member State of all the entities defined in Article 25;

   – a description of the implementation, monitoring, control and evaluation systems;

   – a definition of the procedures for the mobilisation and circulation of financial flows in order to ensure their transparency;

– the provisions laid down to ensure that the multiannual programme is publicised.

2. The Member States shall establish each multiannual programme in close cooperation with the partners referred to in Article 13.

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

4. The Commission shall appraise the proposed multiannual programme in light of the following:

(a) its consistency with the objectives of the Fund and the strategic guidelines defined in Article 19,

(b) the relevance, appropriateness and expected results of the strategy and operational priority themes proposed by the Member State;

(c) the compliance of the management and control systems set up by the Member State for the implementation of the Fund's interventions with the provisions set out in this Decision;

(d) its compliance with Community law and in particular with Community law aiming at ensuring the free movement of persons in conjunction with the directly related flanking measures with respect to external borders controls, asylum and immigration.

5. Where the Commission considers that a multiannual programme is inconsistent with the strategic guidelines or does not comply with the provisions of this decision setting out management and control systems, it shall request the Member State to revise the proposed programme accordingly.

6. The Commission shall adopt each multiannual programme within four months following its formal submission, in accordance with the procedure referred to in article 52(2).

Article 21

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, particularly in the light of Council conclusions. Multiannual programmes may be re-examined in the light of evaluations and / or following implementation difficulties.

2. The Commission shall adopt a decision on the revision of the multiannual programme as soon as possible after the formal submission of formal submission of a request by the Member State concerned.

Article 22

Annual programmes

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

2. The Commission shall provide Member States, no later than 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 15.

3. Member States shall submit to the Commission, no later than 1 November of each year, a draft annual programme for the following year, established in accordance with the multiannual programme and including:

   (a) the general rules for selection of projects to be financed under the annual programme;

   (b) a description of the tasks to be carried out by the responsible authority when implementing 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 Article18 for the purpose of implementing the annual programme.

4. When examining the Member State's proposal, the Commission shall take account of the final amount of the appropriations allocated to the Fund under the budgetary procedure and shall adopt the decision on co-financing from the Fund no later than 1 March of the year in question. The decision shall indicate the amount allocated to the Member State and the period for which the expenditure is eligible. The Commission shall communicate to the Agency the approved national annual programmes.

CHAPTER V
MANAGEMENT AND CONTROL SYSTEMS

Article 23

Implementation

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

Article 24

General Principles in the management and control systems

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

(a) a clear definition of the functions of the bodies and / or departments concerned in management and control and a clear allocation of functions within each body;

(b) a clear separation of functions between bodies concerned in management, certification of expenditure and control and between those functions within each body;

(c) adequate resources for each body and / or department to carry out the functions which have been allocated to it throughout the period of implementation of actions financed by the Fund;

(d) effective internal control arrangements of the responsible authority and any delegated authority;

(e) reliable accounting, monitoring and financial reporting systems in computerised form;

(f) an effective system of reporting and monitoring where the performance of tasks is delegated;

(g) detailed manuals of procedures in relation to the functions to be performed;

(h) effective arrangements for the audit of the functioning of the system;

(i) systems and procedures to ensure a sufficient audit trail;

(j) procedures concerning the reporting and the monitoring of irregularities and the recovery of amounts unduly paid.

Article 25

Designation of authorities

1. For each multiannual programme 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, which shall be responsible for the management of multi-annual and annual programmes supported by the Fund and shall handle all communication with the Commission;

(b) a certifying authority: national public authority or body operationally independent of any authorising department of the responsible authority, designated by the Member State to certify declarations of expenditure and applications for payment before they are sent to the Commission;

(c) an audit authority: national public authority or body operationally independent of the responsible authority designated by the Member State and responsible for verifying the sound operation of the management and control system.

(d) where appropriate, a delegated authority;

(e) a compliance assessment body which shall be designated at the time of the submission to the Commission of each draft multiannual programme. The Commission may accept the designated audit authority as the compliance assessment body where it has the necessary capacity and operational independence. It must carry out its work according to international audit standards.

2. The Member State shall lay down rules governing its relations with those authorities and bodies and their relations with the Commission.

3. Subject to Article 24, point b), control and certification functions may be carried out by the same body or department.

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

Article 26

Responsible authority

1. The responsible authority may be a body of the Member State itself, a national public authority, as well as a body governed by the private law of the Member State and which has a public-service mission. Where the Member State designates a responsible authority which is not a body of the Member State itself, it shall lay down all the arrangements governing its relations with the said authority and the latter's relations with the Commission.

2. The body designated as 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.

3. The Member State shall provide the responsible authority with adequate funding so that it can carry out its tasks properly and uninterruptedly throughout the period 2007-2013.

Article 27

Tasks of the responsible authority

1. The responsible authority shall have responsiblility for efficient, effective and correct managing and implementation of the multiannual programme. It shall in particular:

(a) consult relevant partners (non-governmental organisations, local authorities, competent international organisations, social partners etc.) through the partnership mechanism established in Article 13;

(b) submit to the Commission the proposals for multiannual and annual programmes defined in Articles 20 and 22;

(c) organise and advertise calls for tenders and proposals;

(d) organise selection and award procedures for Fund co-financing in accordance with the principles of transparency, equal treatment and non-combination of grants;

(e) receive the payments made by the Commission, and make payments to the beneficiaries;

(f) ensure consistency and complementarity between co-financing under the Fund and from other relevant national and Community financial instruments;

(g) verify the delivery of the co-financed products and services and that the expenditure declared for actions has actually been incurred and complies with Community and national rules;

(h) ensure that there is a system for recording and storing in computerised form detailed 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;

(i) ensure that beneficiaries and other bodies involved in the implementation of actions cofinanced by the Fund maintain either a separate accounting system or an adequate accounting code for all transactions relating to the operation;

(j) ensure that the evaluations of multiannual programmes referred to in Article 48 are carried out within the time limits laid down in this

Decision and meet the quality standards agreed between the Commission and the Member State;

(k) set up procedures to ensure that all documents regarding expenditure and audits required to ensure an adequate audit trail are held in accordance with the requirements referred to in Article 43;

(l) ensure that the audit authority receives, for the purposes of carrying out the audits defined in Article 30, paragraph 1 all necessary information on management procedures operated and the projects co-financed by the Fund;

(m) ensure that the certifying authority receives all necessary information on the procedures and audits carried out in relation to expenditure for the purpose of certification;

(n) draw up and submit to the Commission reports, statements of expenditure certified by the certifying authority and applications for payment;

(o) carry out information and advisory activities; and dissemination of results of supported actions;

(p) cooperate with the Commission and the responsible authorities in the other Member States.

2. The responsible authority's management activities for projects implemented in the Member States can be financed under the technical assistance arrangements referred to in Article 18.

Article 28

Delegation of task 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 26 above.

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

Article 29

Certifying Authority

1. The certifying authority of a multiannual programme shall:

(a) certify that:

– the statement of expenditure is accurate, results from reliable accounting systems and is based on verifiable supporting documents,

– 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 audits carried out in relation to expenditure included in statements 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) ensure the recovery of any Community financing found to have been unduly paid as a result of irregularities detected, together with interest where appropriate, keeping an account of amounts recoverable and repaying amounts recovered to the Commission, where possible by deducting them from the next statement of expenditure.

2. The certifying authority's activities relating to projects implemented in the Member States can be financed under the technical assistance arrangements referred to in Article 18, provided that the prerogatives of this authority as described in Article 25 are respected.

Article 30

Audit Authority

1. The audit authority of a multiannual programme shall :

(a) ensure that audits are carried out in accordance with international audit standards to verify the effective operation of the management and control system of the multiannual programme;

(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 subparagraphs a) and b), the method to be used, the sampling method for audits on actions

supported by the Fund and the indicative planning of audits to ensure that the main beneficiaries of cofinancing by the Fund are audited and that audits are spread evenly throughout the programming period;

2. Where the designated audit authority under this decision is also the designated audit authority under Decisions….., …… and …… [50], or where common systems apply to two or more of these Funds, a single combined audit strategy may be submitted under point c).

3. The audit authority shall draft a final report on the implementation of the annual programmes as defined in Article 50(2), 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 reporting any shortcomings found in the systems for the management and control of the programme.

   (b) an opinion as to whether the management and control system has operated effectively to give a reasonable assurance on the correctness of the statements of expenditure presented to the Commission and the legality and regularity of the underlying transactions.

   (c) a declaration assessing the validity of the application for payment of the final balance and the legality and regularity of the underlying transactions covered by the final statement of expenditure.

4. Where the audits referred to in paragraph 1 are carried out by a body other than the audit authority, the audit authority shall ensure that such bodies have the necessary operational independence and that the work is performed to internationally accepted audit standards.

5. The activities of the audit authority or of the body referred to in paragraph 4 relating to projects implemented in the Member States can be financed under the technical assistance arrangements referred to in Article 18, provided that the prerogatives of this authority as described in Article 25 are respected.

CHAPTER VI
CONTROLS

Article 31

Responsibilities of the Member States

1. Member States shall be responsible for ensuring sound financial management of multiannual and annual programmes and the legality and regularity of underlying transactions.

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[50] Insert references to decisions establishing the ERF, the Integration Fund and the return fund.

2. They shall ensure that responsible authorities and any delegated authority, certifying authorities, audit authorities and any other bodies concerned receive adequate guidance on setting up the management and control systems referred to in Articles 24 to 30 to ensure that Community financing is used efficiently and correctly.

3. Member States shall prevent, detect and correct irregularities. They shall notify these to the Commission, and keep the Commission informed of the progress in the administrative and legal proceedings.

When amounts unduly paid to a beneficiary cannot be recovered, the Member State is responsible for reimbursing the amounts lost to the budget of the European Communities.

4. Member States shall be primarily responsible for financial control of actions and shall ensure that management 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. Member States shall cooperate with the Commission for the collection of the statistics needed for the implementation of Article 15.

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

Article 32

Management and control systems

1. Prior to the adoption of a multiannual programme, the Member States shall ensure that management and control systems for operational programmes have been set up in accordance with Articles 24 to 30. They shall be responsible for ensuring that the systems function effectively throughout the programming period.

2. Member States shall submit to the Commission, together with each draft annual multiannual programme, a description of the systems, covering in particular 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. Within three months of the submission to the Commission of each draft multiannual programme, the Member States shall submit a report established by the compliance assessment body setting out the results of an assessment of the systems and giving an opinion on their compliance with Articles 24 to 30. In the event that the opinion contains reservations, the report shall indicate the shortcomings and their seriousness. The Member States shall draw up, in agreement with the Commission, a plan setting out the corrective measures to be taken and the timetable for their implementation.

4. The detailed rules for implementing paragraphs 1 to 3 shall be adopted in accordance with the procedure referred to in Article 52(2).

Article 33

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 24 to 30, and on the basis of the annual audit reports and its own audits that the systems function effectively during the period of implementation of the multiannual programmes.

2. Without prejudice to audits carried out by Member States, Commission officials or authorised Commission representatives may carry out on-the-spot audits to verify the effective operation of the management and control systems, which may include audits on actions included in the annual programmes, with a minimum of one 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 audits.

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.

Article 34

Cooperation with the control bodies of the Member States

1. The Commission shall cooperate with the audit authorities of multiannual programmes to coordinate their respective control plans and audit methods and shall immediately exchange the results of audits carried out on management and control systems in order to make the best possible use of control resources and to avoid unjustified duplication of work.

   The Commission shall provide its comments on the audit strategy presented under Article 30 not later than three months or at the first meeting following its reception.

2. In determining its own audit strategy, the Commission shall identify those multiannual programmes

   (a) which comply with the system established under Article 32 without reservations or for which reservations have been withdrawn following corrective measures; and

(b) for which the audit strategy of the audit authority under Article 30 is satisfactory and where reasonable assurance has been obtained that the management and control systems function effectively on the basis of the results of audits by the Commission and the Member State.

3. For those programmes, the Commission may inform the Member States concerned that it will rely principally on the opinion of the audit authority as to the correctness, legality and regularity of expenditure declared and will carry out its own on-the-spot audits only in exceptional circumstances.

CHAPTER VI
FINANCIAL MANAGEMENT

Article 35

Eligibility – declarations of expenditure

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

2. Expenditure shall correspond to the payments effected by the beneficiaries. It shall be justified by receipted invoices or accounting documents of equivalent probative 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 Commission decision on co-financing indicated in Article 22(4). The co-financed actions must not have been completed before the starting date for eligibility.

4. The following expenditure shall not be eligible for a contribution from the Fund:

– VAT;

– interest on debt;

– the purchase of land for an amount exceeding 10% of the total eligible expenditure for the operation concerned;

– housing.

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

Article 36

Wholeness of payment to beneficiaries

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

Article 37

Use of the euro

All amounts mentioned in the financing decisions by the Commission, in the commitments and payments made by the Commission as well as the amounts of certified expenditure and requests for payment from the Member States shall be expressed and carried out in euro.

Article 38

Commitments

Community budgetary commitments shall be made annually on the basis of the Commission decision on co-financing referred to in Article 22(4).

Article 39

Payments - Prefinancing

1. Payments by the Commission of the contribution from the Funds 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 pre-financing payment representing 50% of the amount allocated in the Commission's annual decision on co-financing by the Fund shall be made to the Member State within sixty days following the adoption of the co-financing decision.

4. A second pre-financing payment shall be made no more than three months after the Commission has approved a progress report on implementation of the annual programme and a certified declaration of expenditure drawn up in accordance with Articles 29, point a) and 35, accounting for at least 70% 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 co-financing decision or, in any event, 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. Interests generated by pre-financing payments shall be assigned to the programme concerned and must be deducted from the amount of public expenditure declared in the final statement of expenditure.

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

Article 40

Balance payments

1. The Commission shall pay the balance provided it has received the following documents within nine months from the end date of eligibility of costs defined in the annual decision on co-financing by the Fund:

   (a) a certified declaration of expenditure and a request for payment of the balance or declaration of reimbursement duly drawn up in accordance with Articles 29, point a) and 35;

   (b) the final implementation report for the annual programme, including the information set out in Article 51;

   (c) the audit report, opinion and declaration provided for in Article 30(2);

   The payment of the balance is subject to the acceptance of the final implementation report and of the statement of validity for the request for payment of the balance.

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

3. The automatic cancellation procedure defined in paragraph 2 shall be suspended, for the amount of the projects concerned, where legal proceedings or administrative appeal having suspensory effects are ongoing at Member State level at the time of submission of the documents defined in paragraph 1. The Member State shall, in the partial final report submitted, give detailed information on such projects, and send reports on progress made with regard to these projects every 6 months. Within 3 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 be interrupted if the Commission has adopted a decision suspending payments of the co-financing for the relevant annual programme in accordance with the provisions of Article 40. The period shall start to run again from the date when the Commission decision referred to in Article 42(3) has been notified to the Member State.

5. Without prejudice to the provisions of Article 41, the Commission shall, within six months of receiving the documents referred to in paragraph 1, 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 the Member States.

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

Article 41

Interruption

1. The payment deadline shall be interrupted by the authorising officer by delegation within the meaning of Regulation (EC, Euratom) No 1605/2002 for a maximum period of six months if there are doubts as to the proper functioning of the management and control systems or if the authorising officer requires additional information from the national authorities in the process of monitoring the observations made under the annual review, or if s/he suspects that serious irregularities, detected or presumed, are included in the expenditure declared.

   The Commission shall inform the Member State concerned and the responsible authority immediately of the reasons for the interruption. The Member State shall take the necessary steps to correct the situation as soon as possible.

2. The maximum period of six months shall be extended for another maximum period of six months if it proves necessary to adopt a decision in accordance with Articles 42 and 45.

Article 42

Suspension

1. All or part of the pre-financing and balance payments 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 statement 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 Article 31 and 32**.**

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

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

4. If the required measures are not taken by the Member State, the Commission may adopt a decision to reduce the net amount or cancel the Community contribution to the annual programme in accordance with Article 46.

Article 43

Conservation of documents

The responsible authority shall ensure that all the supporting documents regarding expenditure and audits on the annual programme concerned are kept available for the Commission and the Court of Auditors.

The documents shall be kept available at least for a period three years following the closure of an annual programme, without prejudice to the rules governing State aid. This period shall be interrupted either in the case of legal proceedings or at the request of the Commission stating the reasons

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.

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

CHAPTER VIII
FINANCIAL CORRECTIONS

Article 44

Financial corrections established by the Member States

1. Without prejudice to the Commission's responsibilities for implementing the general budget of the European Communities, the Member States shall be take responsibility in the first instance for investigating irregularities. They shall act upon evidence of any major change affecting the nature or the conditions for the implementation or control of assistance and making the required financial corrections.

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

The corrections made by the Member States shall consist in recovering all or part of the Community contribution. The Member State shall take into account the nature and gravity of the irregularities and the financial loss to the Fund.

Member States shall include in the annual report sent to the Commission under Article 50(2) a list of cancellation proceedings initiated for the annual programme concerned.

The corrections made by the Member State shall consist in cancelling all or part of the Community contribution, and, 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 by Article 47(2).

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

Article 45

Audit of accounts and financial corrections by the Commission

1. Without prejudice to the powers of the Court of Auditors or the checks carried out by the Member States in accordance with national laws, regulations and administrative provisions, Commission officials or authorised Commission representativesmay carry out on the spot checks, including sample checks, on the operations financed by the Fund and on management and control systems with a minimum of one working day's 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.

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

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

Article 46

Criteria for the corrections

1. If the Member State has not made the corrections within the period as provided for in Article 42(2) and if no agreement has been reached, the Commission may decide within three months to cancel all or part of the Community contribution to an annual programme when 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 statement of expenditure is irregular and has not been corrected by the Member State prior to the opening of the correction procedure under this paragraph; and

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

(d) 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 case of irregularity relates to a statement of expenditure for which a positive assurance had previously been given in accordance with the Article 30(3) point b) in an annual report, there will be a presumption of a systemic problem giving rise to the application of a flat-rate or extrapolated correction, unless the Member State can provide proof within three months to rebut this presumption.

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

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

Article 47

Repayment

1. Any repayment due to be made to the Commission shall be effected before the due date indicated in the order for recovery drawn up in accordance with Article 72 of the Council Regulation (EC, Euratom) No 1605/2002[51]. 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 Communities, in force on the first calendar day of the month in which the due date falls, increased by three and a half percentage points.

[51] OJ L 248, 16.12.2002.

Article 48

Obligations of Member States

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

CHAPTER IX
MONITORING, EVALUATION AND REPORTS

Article 49

Monitoring and evaluation

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

2. The Fund shall be evaluated regularly by the Commission in partnership with the Member States to assess the relevance, effectiveness and impact of actions in the light of the objectives referred to in Article 3. It shall also look at complementarity between the actions implemented under the Fund and those pursued under other relevant Community policies, instruments and initiatives.

3. The Commission shall assess by December 2011 the impact of the Fund on the development of the policy and legislation on external border control, assess the synergies between the Fund and the tasks of the Agency as well as the appropriateness of the criteria established to allocate the funds between the Member States in light of the objectives pursued by the European Union in this area.

Article 50

Reports

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.

2. No later than nine months after the eligibility deadline for expenditure laid down in the co-financing decision for each annual programme, the responsible authority shall submit a final implementation report and a final declaration of expenditure to the Commission as provided by Article 35.

3. The Member States shall submit to the Commission:

(a) no later that 30 June 2010, an evaluation report on the implementation of actions co-financed by the Fund.

(b) no later than 30 June 2012 (for the period 2007-2010) and 30 June 2015 (for the period 2011-2013) respectively, an evaluation report on the results and impact of actions co-financed by the Fund.

4. The Commission shall submit to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions:

(a) no later than 30 June 2009, a report on the application of the criteria set out in article 14 for the annual breakdown of resources between member States; together with proposals for amendments if deemed necessary;

(b) no later than 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) no later than 31 December 2012 (for the period 2007-2010) and 31 December 2015 (for the period 2011-2013) respectively, an ex post evaluation report.

Article 51

Final annual report

1. The reports referred to in Article 50(2) shall include the following information in order to obtain a clear view of the implementation of the annual and multiannual programmes:

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

(b) the progress made in implementing the multiannual programme and its priorities in relation to their specific, verifiable targets, with a quantification, wherever and whenever they lend themselves to quantification, of the physical indicators and the indicators of implementation, results and impact for each priority concerned;

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

– monitoring and evaluation measures, including data collection arrangements;

– a summary of any significant problems encountered in implementing the operational programme and any measures taken;

– the use made of technical assistance.

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

2. The reports shall be judged acceptable where they contain all the information listed in paragraph 1. The Commission shall reach a decision on the content of the annual report on implementation submitted by the responsible a-uthority within two months. If the Commission does not respond within the time limit laid down, the report shall be deemed to be accepted. The Commission shall communicate to the Agency the approved implementation reports.

CHAPTER X

GENERAL AND FINAL PROVISIONS

Article 52

Committee

1. The Commission shall be assisted by the common Committee "Solidarity and Management of Migration Flows", established by this Decision [52] ("the "committee").

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

3. The Committee shall adopt its Rules of Procedure.

Article 53

Review

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

Article 54

This Decision shall apply from 1 January 2007.

Article 55

Addressees

This Decision is addressed to the Member States.

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[52] Insert references to decisions establishing the ERF, the Integration Fund fund and the return fund.

Done at Brussels,

For the European Parliament
The President

For the Council
The President

EXPLANATORY MEMORANDUM

1. DEVELOPING SOLIDARITY IN THE AREA OF INTEGRATION OF THIRD COUNTRY NATIONALS

1.1. Problem statement and analysis

Migration from third countries into the EU is a daily reality in each Member State. While the relative share of third country nationals varies considerably in Member States, all are confronted with the phenomenon of increasing ethnic, cultural and linguistic diversity in their societies and the need to manage 'intercultural relationships'.

As confirmed by the First Annual Report on Migration and Integration[53], immigration continues to play an important role in the economic and social development of the European Union. In the context of an ageing and shrinking working-age population, increased immigration flows are likely and increasingly necessary to meet the need of the enlarged EU. Europe must prepare for this.

The successful integration of immigrants is both a matter of social cohesion and a prerequisite for economic efficiency. In the context of a relaunched Lisbon agenda, it is crucial to ensure integration of both established and future immigrants.

The importance of stronger policies to promote the integration of third country nationals in the EU is clearly reflected in the Hague Programme. Legislation safeguarding the rights of long-term residents, legislation on family reunification and legislation on combating discrimination, racism and xenophobia, have all been agreed upon and are now transposed into national law or shortly will be. These directives constitute the backbone of EU integration policy.

Third country nationals have specific integration needs, different from the needs ofother disadvantaged groups, quite simply because they are very often newcomers to the host society. Third-country nationals may often not be familiar with European values, and may have limited knowledge of the language of the host community and of ways of doing everyday things. Equally importantly, they sometimes do not have the same rights and obligations as EU nationals. Indeed, third-country nationals may be liable to severe sanctions, in some cases involving a withdrawal of the right to abode, if they do not comply with regulations relating to them or do not follow specified procedures.

1.2. The way forward

The common basic principles adopted by the Council and the representatives of the governments of the Member States at the JLS Council on 19 November 2004 underline the need for a holistic approach to integration. It is stated that not only within Member States but also at the European level, steps are needed to ensure that the focus on integration is a mainstream consideration in policy formulation and implementation, while at the same time specific policies for integrating third-country nationals are being developed.

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[53] COM(2004) 508, 16.7.2004.

The principles underline that "the failure of one individual Member State can have adverse implications for other Member States and the European Union" and that it is in the interest of all Member States to pursue effective integration strategies.

The Commission initiated pilot projects on integration (INTI) in 2002. These initiatives were limited by the limited margin available under Heading 3 of the financial perspectives running until the end of 2006. Given that the projects have been very successful, the Commission launched the idea of an 'Integration Fund' at an inter-ministerial conference on Integration during the Dutch Presidency.

1.3. The objectives of the Fund

In accordance with the common basic principles, the six main policy objectives to which the Fund shall contribute are:

1. Facilitation of the organization and implementation of admission procedures for migrants, by strengthening their integration component and anticipating the needs of third-country nationals;

2. Contribution to the organisation and implementation of introduction programmes and activities for third country nationals, by way of capacity building, policy development and implementation (common basic principle No 4);

3. Increase of civic, cultural and political participation of third country nationals in the host society, in order to promote their active citizenship and recognition of fundamental values; (common basic principle No 7)

4. Strengthening of the capacity of Member States' public and private service providers to interact with third country nationals and their organizations and to answer in a better way the needs of different groups of third country nationals;

5. Strengthening of the ability of the host society to adjust to increasing diversity by targeting integration actions at the host population (common basic principle No 1)

6. Increase of the capacity of Member States to develop, monitor and evaluate integration policies.

Besides a solidarity mechanism, the Fund also provides for a policy framework to support the exchange of experiences, cooperation and best practices between Member States, on the initiative of the Commission ("Community actions"), in particular in order to continue the encouragement of a more structured policy development as initiated by INTI.

1.4. Complementarity with the European Social Fund

The Communication of 14 July 2004 on the Financial Perspectives stressed that "*the implementation of a common immigration policy also requires that the Community provides a credible response to the multidimensional issue of integration of third country nationals. This implies that a greater emphasis be placed on increased participation of migrants within the activities of the European Social Fund (…). For those actions not covered by the ESF, such as participation in civic and political life, respect for diversity and civic citizenship, or measures addressed to asylum seekers, including networking, benchmarking and the development of*

indicators in these areas, the funding will be provided under heading 3" of the financial perspectives.

In order to develop this response, the Commission put forward its proposal for a revised European Social Fund (hereafter referred to as ESF) on 14 July 2004. In this proposal it is stated that it should support specific actions to strengthen the social inclusion of migrants and increase their participation in employment, including guidance and language training and validation of competences acquired abroad, as well as promoting diversity in the workplace and the combat against discrimination. Moreover, the European Employment Strategy and the Social Inclusion Process also provides for specific objectives for the integration of migrants into the labour market and in accessing basic rights, services and resources. Finally, the anti-discrimination directives in place since 2000 set a legal framework to ensure that any form of racism and discrimination of third country nationals is prohibited.

This instrument is meant to support complementary activities related to the integration of third-country nationals, which are not covered by the ESF. It is targeted to addressing specific needs in the area of integration arising from the development of the common immigration policy.

By creating a separate instrument which is targeted at third-country nationals and linked with solidarity on the basis of the relative share of third country nationals present in Member States, certain specific challenges identified with respect to immigrants' lack of integration are addressed. In particular, the instrument would affect third-country nationals' opportunities to meet integration requirements by their host country, provide access to comprehensive civic orientation courses, and ensure that immigrants have the opportunity to integrate into aspects of society other than the labour market, in particular for those not working or allowed to work. This reflect the thinking in the Common Basic Principle no 4 where the Council calls for introduction programmes that focus on putting together the most appropriate toolkit to start the integration process. Pursuing such programmes will allow immigrants to quickly find a place in the key domains of work, housing, education, and health, and help start the longer-term process of normative adaptation to the new society.

The reasons why this instrument complements the ESF are further developed in the extended impact assessment.

The Commission's Communication on Migration, Integration and Employment and the Annual Report on Migration and Integration highlighted the fact that a mainstreaming approach can not stand alone to ensure successful integration into all aspects of society and to create a social cohesive society in which immigrants feel they belong. An instrument specifically targeted at third-country nationals and addressing their special needs is imperative to complement the efforts under the ESF in this respect.

To ensure consistency between this instrument and the ESF, mechanisms have been devised to prevent overlaps both at EU level and at national level, including obligations of the implementing national authorities to coordinate their programming for the respective funds.

2. EVALUATIONS

The Commission carried out an ex ante evaluation, which is annexed to this proposal.

3. LEGAL BASIS AND RATIONALE OF THE POLICY INSTRUMENT

3.1. Choice of legal basis

The proposed legal basis for this Council Decision is Article 63, paragraph 3 because this legislation involves "measures on immigration policy" within the area of "conditions of entry and residence, and standards on procedures for the issue by Member States of long-term visas and residence permits, including those for the purpose of family reunion" (Article 62(3)(a).

Because the proposal is based on Title IV of the EC Treaty (Visas, asylum, immigration and other policies related to free movement of persons), it must be presented and adopted in accordance with the protocols on the position of the United Kingdom, Ireland and Denmark, annexed to the Treaty of Amsterdam. The United Kingdom and Ireland have the possibility to opt in this measure. Denmark will not take part in the adoption of this Decision, and is not bound by it or subject to its application.

Expressing solidarity in the allocation of the resources

First, to express that many Member States (and in particular the new Member States) would need to make some structural investments to successfully integrate third country nationals, Member States will be allocated a fixed amount each year. This amount will be higher for the period 2007 - 2013 for the states which acceded to the European Union on 1 May 2004. Moreover, this amount will also be higher for Member States which accede to the European Union in the period 2007 – 2013 for the duration of the period 2007 - 2013 from the year after their accession.

Second, to express the notion of solidarity, the bulk of the allocations to the Member States would be determined on the basis of a distribution key defining the relative share of Member States in relation to third country nationals legally staying within the EU. The distribution key would consist of two components: one relating to stock data and the other to flow data of third country nationals. For the first component the average will be taken of the total number of third country nationals legally present in the Member State over a period of three years in order to smooth out any accidental, non representative increases or decreases. For the second component of the total number of third country nationals who have obtained an authorisation to stay legally on the territory of the Member States (either under national or Community law) in the last three years will be added up. This total would then roughly correspond to the number of persons likely to benefit from integration measures for newcomers, assuming that introduction programmes and other 'welcome' activities may occur after the year in which the persons were admitted and may involve a series of courses taking place over a period of one or two years.

Since the Commission proposes that the Fund focuses mainly on third country nationals having recently arrived and been admitted by a Member State to reside in its territory ('newcomers'), the second component would be the most important one and would therefore be weighed more than the first (60%). The purpose is to direct the Fund to support for those Member States which have only recently started to welcome migrants or to those which are likely to become immigration countries in the period covered by these financial perspectives. The emphasis on newcomers should be reviewed.

The combination of such criteria for the distribution of funds will ensure that evolutions (relating for example to changes in immigration policies) are duly taken into account in the

financial allocation method, allowing corrective action to be taken with the support of the Fund.

For the flows component, certain categories of third country nationals have to be excluded from the calculation method, such as students, researchers and seasonal workers and persons receiving a change of status or an extension of stay previously granted.

Both for the stock and the flows components, refugees and other beneficiaries of international protection are excluded as they are covered by the European Refugee Fund. On the other hand, persons receiving a humanitarian residence permit (for instance for medical reasons) can be included as they are not covered by the ERF.

This is without prejudice to the possibility of Member States to direct funding to actions which would (also) cover students, researchers and seasonal workers.

3.2. Actions defined within the Fund

In view of the general objectives of the Fund of contributing to the implementation of national integration policies in accordance with the Common Basic Principles, the Commission proposes to implement the Fund mainly through shared management with the Member States. This will allow for a financial support targeted in accordance with the specific situation and needs of each Member State.

Furthermore, to ensure the use of funds in the most efficient way, the proposal contains very detailed provisions as regards the operational objectives to be achieved as well as the types of actions identified as contributing to these objectives.

3.3. Programming

Programming is organised on a multiannual level, with two programming periods: 2007-2010 and 2011-2013.

The programming is based on a two-step approach:

Multiannual programming (political level): on the basis of the strategic guidelines adopted by the Commission, and taking into accounts an analysis of its shortcomings and needs, each Member State will prepare a national multiannual programme containing priorities and a strategy for action, which will be negotiated with the Commission and constitute the framework for preparing the operation

Annual programming (operational level): on the basis of the agreed strategy and of the allocation of resources resulting from the application of strictly defined criteria, the Commission would adopt an annual programme for each Member State. The annual programmes would be defined at an operational level.

3.4. Financial management and control

Within the framework of shared management, one of the key objectives of the future regulatory package for the 2007-2013 programming period is to clearly delimit on the basis of experience gained from the current body of law, the framework, the nature, and the division of responsibility between the different actors concerned by the execution of the Community budget.

3.5. Management and control systems

The draft Decision increases the coherence and transparency of the overall architecture of the management and control systems of the Fund:

- The coherence, as it is clearly defined that the same minimum conditions are applicable to the control and audit systems at all levels of the process, as well as the respective tasks and obligations of the different actors;

- The transparency, as it is necessary that the different actors concerned by the controls become aware of the results of the controls of each part, in order to improve efficiency, efficacy and the overall balance of the system.

The draft Decision defines a common basis of a minimum set of conditions which any management and internal control system concerned by the management of the Fund shall comply with. To this end, the Member States shall provide an assurance in relation with the management and control systems:

- At the beginning of each multiannual period, via the opinion on the system by an independent audit body;

- Each year, via the opinion of the audit authority supported by an annual control report and an assurance on the final statement of expenditure attached to the final report of implementation of annual programmes.

The principle of additionality – i.e. EU resources should add to rather than replace national resources - will remain a key principle. Member States are responsible for ensuring that the principle of additionality applies within the Fund.

The draft Decision proposes the setting up of a procedure of interruption and suspension of payments in case of serious problems at the moment of the presentation of the request for payment.

4. SUBSIDIARITY AND PROPORTIONALITY

Subsidiarity

The fundamental principle remains that of Member States' responsibility for the development and implementation of integration strategies. However, national efforts to implement 'common basic principles' can be supported by a Fund in view of the implications of these policies for the other Member States. The actions to be supported must therefore clearly be identified, linked to objective conditions in individual states and bringing added value to the Community as a whole.

Proportionality

The decision will make it possible to provide financial support from the Fund to a list of actions which contribute operationally to a series of identified specific objectives, while leaving the Member States to select the actions and the way in which they are to be carried out under schemes agreed in conjunction with the Commission. The use of Community

appropriations must also be subject to clear and uniform rules contained in a Council decision, which is the appropriate instrument for implementing Community programmes.

5. BUDGETARY IMPLICATIONS

The financial allocation for the Fund under the Financial Perspectives proposed by the Commission for the 2007-2013 period is EUR 1.771million.

2005/0048 (CNS)

Proposal for a

COUNCIL DECISION

establishing the European Fund for the Integration of Third-country nationals for the period 2007-2013 as part of the General programme 'Solidarity and Management of Migration Flows'

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[54],

Having regard to the opinion of the European Parliament[55],

Having regard to the opinion of the European Economic and Social Committee[56],

Having regard to the opinion of the Committee of the Regions[57]

Whereas:

(1) With a view to the progressive establishment of an area of freedom, security and justice, the Treaty establishing the European Community provides both for the adoption of measures aimed at ensuring the free movement of persons, in conjunction with flanking 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 special meeting in Tampere on 15 and 16 October 1999, stated that the European Union must ensure fair treatment of third country nationals who are 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 EU 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.

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(4) In the Hague Programme of 4-5 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 of the European Union 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'. 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 and in full synergy with existing legislative frameworks, including those relating to gender equality, non discrimination and social inclusion, the European Convention on Human Rights and the Community instruments containing integration provisions, such as the Council Directives framing a common immigration policy on the basis of the Treaty establishing the European Community, and in particular points 3 and 4 of Article 63 thereof.

(7) The Council of 14 October 2002 stresses in its Conclusions on Integration that newly arrived immigrants should have quick and appropriate access to information on their host society and language courses should be established in accordance with national law. The Council also finds it important that the national systems encourage an active participation of third country nationals in Community life and on the labour market in accordance with national law. Integration policies of Member States imply concerted action by governments, regional and local authorities, migrant and non governmental organisations, social partners and civil society.

(8) The failure of an individual Member State to develop and implement integration policies can have in different ways 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 budgets of the European Union from 2003 to 2005 for the financing of preparatory actions in the field of integration.

(10) In accordance with the 2002 Conclusions on integration, the Commission proposed, in its Communication on the financial perspectives of 14 July 2004, that a greater emphasis be placed on increased participation of migrants within the activities of the European Social Fund (hereafter ESF). In its proposal for the ESF for the period 2007-2013, the Commission stated that it should support specific action to strengthen the social integration of migrants and increase their participation in employment, including guidance and language training and validation of competences acquired abroad, as well as promoting diversity in the workplace and the combat against discrimination.

(11) Moreover, in light of the preparatory actions, 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 settle and take actively part in all aspects of European societies, in accordance with the Common Basic Principles and in complement with the ESF.

(12) To ensure the consistency of the Community's response to integration of third country nationals, actions financed under this instrument should be specific and complementary to actions financed under the ESF. 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 this instrument will be developed.

(13) Bearing in mind that this instrument 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 this instrument 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 to ensure that actions under this Fund should be specific and complementary to actions financed under the ESF.

(14) This instrument is designed to form part of a coherent framework entitled the General programme 'Solidarity and Management in Migration Flows', which aims at addressing the issue of a fair share of 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 immigration, as developed in accordance with Title IV of the Treaty establishing the European Community.

(15) The support provided by the Fund will be more efficient and better targeted if co-financing of eligible actions is based on strategic multiannual programmes and on related annual work programmes drawn up by each Member State in cooperation with the Commission.

(16) On the basis of the strategic guidelines adopted by the Commission, each Member State should prepare a multiannual programming document taking into account its situation and needs and setting out its development strategy, which is negotiated with the Commission and decided by the Commission, and constitutes the framework for preparing the annual programmes.

(17) Multiannual programming shall be directed towards achieving the Funds' objectives by ensuring the availability of the necessary financial resources and the consistency and continuity of joint action by the Community and the Member States.

(18) In addition to the specific arrangements made to ensure consistency with the ESF, programming should ensure coordination of the Fund with the other existing financial instruments, such as the European Refugee Fund, the External Borders Fund, the European Return Fund and the PROGRESS programme.

(19) In the context of shared management as referred to in Article 53(1), point 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 Communities58, the conditions allowing the Commission to exercise its responsibilities for implementation of the general budget of the European Communities should be specified and the obligations for the cooperation on the Member States clarified. Applying these conditions will enable the Commission to satisfy itself that Member States are utilising the Fund in a lawful and correct manner and in accordance with the principle of sound financial management within the meaning of Article 27 of the Financial Regulation.

(20) In order to ensure a genuine impact, contributions from the Fund may not replace public expenditure by the Member States under the terms of this Decision.

(21) Objective criteria should be established to allocate the funds to the Member States. These criteria should take into account the total amount of third country nationals legally staying in Member States and the total new admission of third country nationals over a given reference period. Emphasis should be put on new admissions, to express in particular the need for support to those Member States which have only recently started to welcome migrants or to those which are likely to become immigration countries in the period covered by these financial perspectives. The criteria should be reviewed.

(22) Under technical assistance, this instrument should provide support for evaluations, improvement of administrative capacity linked to the management of the Fund, studies, pilot projects and exchanges of experience intended, in particular, to encourage innovative approaches and practices.

(23) Member States should adopt adequate measures to guarantee the proper functioning of management and control system. To this end, it is necessary to establish the general principles and the necessary functions which the systems of all programmes shall fulfil.

(24) It is necessary to provide for the designation of a single responsible authority in each Member State for the management of the Fund's interventions and to clarify its responsibilities. Designation and functions of the audit authority should be also foreseen. In addition, in order to guarantee uniform quality standards concerning the certification of expenditures before their transmission to the Commission and to clarify the nature and quality of the information on which declarations of expenditure are based, it is necessary to provide for the designation of the certification authority.

(25) In accordance with the principles of subsidiarity and proportionality, Member States have the primary responsibility for the implementation and control of the interventions.

(26) 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 to guarantee the efficient and correct implementation of their multiannual and annual programmes.

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58 OJ L 248,16.9.2002, p. 1.

In particular, as far as the management and control are concerned, it is necessary to establish the modalities by which Member States ensure that the systems are in place and function satisfactorily.

(27) Without prejudice to the Commission's powers as regards financial control, cooperation between the Member States and the Commission in this field should be increased and the criteria should be established which allow the Commission to determine, in the context of its strategy of control of national systems, the level of assurance it can obtain from national audit bodies.

(28) In addition to the suspension of payments where shortcomings are detected in the management and control systems, there should be measures allowing the authorising officer by delegation to suspend payments where there are doubts about the sound operation of these systems or for the Commission to make a deduction from payments if the Member State concerned has not implemented all remaining measures in a corrective plan of action.

(29) The effectiveness and impact of actions supported by this instrument also depend on their evaluation. The responsibilities of the Member States and the Commission in this regard, and arrangements to ensure the reliability of evaluation, should be formalised.

(30) Actions should be evaluated with a view to a mid-term review and impact assessment, and the evaluation process should be incorporated into project monitoring arrangements.

(31) This Decision establishes a financial framework for the entire duration of the programme, which is to be the principal point of reference for the budgetary authority within the meaning of point 33 of the interinstitutional agreement of 6 May 1999 between the European Parliament, the Council and the Commission on the budgetary discipline and improvement of the budgetary procedure59.

(32) Since the objectives of the proposed action, 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 those objectives.

(33) 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.60

(34) In accordance with Article 1 and 2 or 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.

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59 OJ C 172, 18.6.1999, p. 1.

60 OJ L 184, 17.7.1999, p. 23.

HAS ADOPTED THIS DECISION:

TITLE I
OBJECTIVES AND GENERAL RULES

CHAPTER I
SUBJECT MATTER, OBJECTIVES AND ACTIONS

Article 1

Subject matter and scope

This decision establishes for the period from 1 January 2007 to 31 December 2013 the European Fund for integration of third-country nationals, hereinafter referred to as « The Fund », as part of the General programme "Solidarity and Management of Migration Flows", in order to contribute to the strengthening of the area of Freedom, Security and Justice and more generally to the attainment of the objectives of the European Union.

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 ones, monitoring and control mechanisms based on a share of responsibilities between the Commission and the Member States.

Article 2

General Objectives of the Fund

1. The general objective of the Fund is to support the efforts of Member States in enabling third-country nationals of different cultural, religious, linguistic and ethnic backgrounds to settle and take actively part in all aspects of European societies as regards admission procedures, basic introduction programmes and activities, participation in civic and political life and respect for diversity and civic citizenship.

2. For the purpose of paragraph 1 the Fund will contribute to the development of national integration strategies for third country nationals which take into account the Common Basic Principles for immigrant integration policy in the European Union as agreed by the Council and the representatives of the governments of the Member States of 19 November 2004.

3. The Fund shall contribute to the financing of the technical assistance on 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 organization and implementation of admission procedures for migrants;

(b) Contribution to the organisation and implementation of introduction programmes and activities for third-country nationals 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,

(c) Increase of civic, cultural and political participation of third-country nationals in the host society and improve dialogue between different groups of third-country nationals, the government and civil society, in order to promote their active citizenship and recognition of fundamental values;

(d) Strengthening of the capacity of Member States' service providers to interact with third-country nationals and the organizations representing migrants and to answer in a better way the needs of different groups of third country nationals, including women and children;

(e) Strengthening of the ability of the host society to adjust to increasing diversity by targeting integration actions at the host population, thus emphasizing the two way process required for successful integration, taking into account the developments in the area of diversity management;

(f) Increase of the capacity of Member States to develop, monitor and evaluate integration policies for third country nationals.

Article 4

Eligible actions in the Member States

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

(a) facilitate the development by Member States of admission procedures 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 such procedures more effective and accessible to third-country nationals by using user-friendly Communication and Information Technology, inter alia for information campaigns and selection procedures;

(c) prepare third-country nationals admitted for their integration into host society in a better way by supporting pre-travel measures such as information packages and comprehensive civic orientation courses in the country of origin.

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

(a) develop and improve the quality of introduction programmes and activities for newly arrived third-country nationals at local and regional level, with a particular emphasis on civic orientation;

(b) reinforce the capacity of introduction programmes and activities to reach out to particular groups, such as dependants of persons subject to admission procedures, children, women, elderly, illiterate or third-country nationals with disabilities, taking into account their specific needs in light of criteria set for successfully completing introduction programmes;

(c) increase the flexibility of introduction programmes and activities related to civic orientation, in particular through part time courses, fast track modules, distance or E-learning systems or similar models, enabling third-country nationals to follow the programmes while at the same time working or studying;

(d) develop and implement introduction programmes or activities related to civic orientation, targeting at young third-country nationals, in particular "late arrivals", with specific social and cultural problems related to identity issues and prevention of delinquency, including mentoring and "role-model" programmes.

3. As regards the objective defined in Article 3 point (c), the Fund shall support actions in Member States which:

(a) contribute to the development of inter-faith and religious dialogue platforms between communities (horizontal) and between communities and policy and decision-making authorities (vertical) aiming at respect for civic citizenship and at diversity;

(b) increase third-country nationals' civic participation and their role as active citizens by facilitating their participation in mainstream (volunteer) organisations or by supporting the development and implementation at local or regional level of special volunteering programs, internship schemes and capacity building designed thereto;

(c) contribute to enhanced civic participation of particular groups of third-country nationals, such as dependants of persons selected for admission programmes, children, women, elderly, illiterate or persons with disabilities;

(d) support within the political decision making process of the Member States the development of national, regional and local advisory platforms for consultation of third-country nationals and exchange of information between all stakeholders;

(e) increase third-country nationals' participation in local elections and democratic processes by supporting awareness raising and information campaigns and capacity building programmes designed thereto;

(f) contribute to the elaboration and improvement of national preparatory citizenship and naturalisation programmes.

4. As regards the objective defined in Article 3 point (d), the Fund shall support actions in Member States which:

(a) render more accessible service providers for third-country nationals by providing inter alia intercultural interpretation and translation services, mentoring programmes, intermediary services by representatives of communities, developing and improving access to one-stop-shop information points and to improve the staff's intercultural capacities;

(b) develop and update comprehensive information tools, such as manuals, websites, registers of staff diversity skills;

(c) build sustainable organisational structures for integration and diversity management and to develop modes of co-operation between different governmental stakeholders enabling officials to swiftly gain information about experiences and practices elsewhere and, where possible, to pool resources;

(d) reinforce the capacity to coordinate national integration strategies for third country nationals at national level across the different levels of government;

(e) 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 the consultation of third-country nationals and the exchange of information between stakeholders, surveys of immigrant communities, and how best to respond to those needs.

5. As regards the objective defined in Article 3 point (e), the Fund shall support actions in Member States which:

(a) promote knowledge within the host society of the contents and consequences of the introduction programmes, activities and admission programmes and interaction thereon with public and private service providers, employers, including SME, educational and other institutions;

(b) increase the acceptance of migration and admission programmes in the host society through awareness raising campaigns;

(c) contribute to the organisation and promotion of (large) intercultural popular events reaching out to specific target groups or the public at large in so far as such events foresee intercultural dialogue and exchanges of view on the multicultural society;

(d) promote the dialogue and exchanges between (youth) organisations of different cultures;

(e) increase advocacy of integration issues;

(f) increase involvement of third-country nationals in the development of society's responses to migration phenomena;

(g) increase the role of private bodies in promoting and managing diversity.

6. As regards the objective defined in Article 3 point (f), the Fund shall support actions in Member States which:

(a) enhance the capacity to collect, analyse and disseminate statistics on integration of third country nationals and integration policies for third country nationals;

(b) contribute to the evaluation of immigration and integration policies for third country nationals by supporting national impact assessments, consultation mechanisms of stakeholders such as employers and educational institutions, evaluation mechanisms and monitoring measures;

(c) develop indicators and benchmarking for measuring progress at national level;

(d) develop high quality tests and evaluation schemes for compulsory integration programmes;

(e) contribute to the evaluation of admission procedures or introduction programmes by supporting representative surveys among third-country nationals having benefited from the programmes and relevant stakeholders, such as enterprises, non-governmental organisations and regional or local authorities.

Article 5

Actions of interest to the Community

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 ("Community actions") concerning immigration and integration policy and measures applicable to the target group as referred to in Article 6.

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

(a) further Community cooperation in implementing Community law and good practices in the field in the field of immigration and good practices in the field of immigration and integration;

(b) support for the setting-up of transnational cooperation networks and pilot projects based on transnational partnerships between bodies located in three or more Member States designed to stimulate innovation, facilitate exchanges of experience and good practice and improve the quality of return policy;

(c) support for transnational awareness-raising campaigns;

(d) support for studies, dissemination and exchange of information on best practices and all other aspects of the Fund, 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 of statistical tools, methods and common indicators.

3. The annual work programme laying down the priorities for Community actions shall be adopted in accordance with the procedure referred to in Article 51(2).

Article 6

Target Groups

1. For the purpose of this Decision the target group shall include:

(a) third country nationals who have obtained an authorisation issued by the authorities of a Member States to stay legally on its territory, be it for employment, self-employment, family reunification or any other purpose set out in national law, except for third country nationals or stateless persons who qualify as a refugee or are eligible for subsidiary protection in accordance with Council Directive 2004/83/EC of 29 April 2004; and

(b) third country nationals who are on the territory of a third country and who, with a view to obtaining an authorisation issued by the authorities of a Member State to come and stay legally on this Member State's territory, are complying with specific pre-departure conditions set out in national law, including those relating to the ability to integrate in the society of this Member State

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

CHAPTER II
PRINCIPLES OF ASSISTANCE

Article 7

Complementarity, consistency and compliance

1. The Fund shall provide assistance which complements national, regional and local actions, integrating into them the priorities of the Community.

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

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

Article 8

Programming

1. The objectives of the Fund shall be pursued in the framework of two multiannual programming periods (2007-2010 and 2011-2013). The multiannual programming system shall include the priorities and a process of management, decision making, auditing and certification.

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

Article 9

Subsidiary and proportional intervention

1. Implementation of multiannual and annual programmes referred to in Articles 19 and 21 shall be the responsibility of Member States at the appropriate territorial level, in accordance with the institutional system specific to each Member State. This responsibility shall be exercised in accordance with this Decision.

2. The means employed by the Commission and the Member States shall vary according to the size of the Community contribution in relation to audit provisions. Differentiation also applies to provisions on evaluation and to the reports on multiannual and annual programmes.

Article 10

Implementation methods

1. The Community budget allocated to the Fund shall be implemented in accordance with Article 53 (1), point (b) of Council Regulation (EC, Euratom) No 1605/2002, with the exception of the Community Actions referred to in Article 5 and the technical assistance referred to in Article 16. The Member States and the Commission shall ensure compliance with the principle of sound financial management.

2. The Commission exercises its responsibility for implementing the general budget of the European Communities 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) interrupting or suspending all or part of payments in accordance with Articles 39 and 40 if the national management and control systems fail, and by applying any other financial correction required, in accordance with the procedures described in Articles 43 et 44.

Article 11

Additionality

1. Contributions from the Fund shall not replace public or equivalent expenditure by a Member State.

2. The Commission shall, in cooperation with each Member State, verify additionality mid-term by 31 December 2012 and ex-post by 31 December 2015.

Article 12

Partnership

1. Each Member State shall organise, in accordance with current national rules and practices, a partnership with the authorities and bodies which it designates, namely:

(a) the implementing authorities designated by the member State for the purposes of the management of the interventions of the European Social Fund and other competent regional, local, urban and other public authorities;

(b) any other appropriate body representing civil society, non-governmental organisations, including the social partners.

Each Member State shall ensure broad and effective involvement of all the appropriate bodies, in accordance with national rules and practices.

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

The partnership shall cover preparation, implementation, monitoring and evaluation of the multiannual programmes.

CHAPTER III
FINANCIAL FRAMEWORK

Article 13

Global resources

1. The annual appropriations for the Fund shall be authorised by the budgetary authority within the limits of the financial perspectives.

2. The Commission shall make indicative annual breakdowns by Member States in accordance with the criteria established in Article 14.

Article 14

Annual distribution of resources for eligible actions in the Member States

1. Each Member State shall receive a fixed amount of EUR 300.000 from the Fund's annual allocation.

   This amount shall be fixed at EUR 500.000 per annum for the period 2007-2013 for the states which acceded to the European Union on 1 May 2004.

   This amount shall be fixed at EUR 500.000 per annum for Member States which will accede to the European Union in the period 2007 – 2013, for the remaining part of the period 2007 – 2013 from the year following their accession.

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

   (a) 40 % in proportion to the average of the total number of legally residing third country nationals in Member States over the previous three years in accordance with Article 6; and

   (b) 60% in proportion to the number of third country nationals who have obtained an authorisation issued by the authorities of a Member States to reside legally on its territory over the previous three years in accordance with Article 6.

3. However, for the purpose of the calculation referred to in point (b) of paragraph 2, 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 of 13 December 2004[61];

[61] OJ L 375, 23.12.2004, p. 12

(c) third country nationals admitted for purposes of scientific research in accordance with Council Directive …/…/..of…/.. 2005

(d) third country nationals who have received a renewal of an authorisation issued by the authorities of 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 of 25 November 2003[62].

4. The reference figures are the latest statistics produced by the Statistical Office of the European Communities in accordance with Community law.

5. Where the statistics referred to in paragraph 4 are not available, Member States shall provide the necessary figures.

Article 15

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 Communities.

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.

5. This may be increased to 60% for projects addressing specific priorities identified in the Commission multiannual guidelines as defined in Article 18.

6. This shall be increased to 75% in the Member States covered by the Cohesion Fund.

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

Article 16

Technical assistance at the initiative of the Commission

1. At the initiative of and/or on behalf of the Commission, 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, within the limits of 0,20% of the Fund's annual allocation.

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62 OJ L 16, 23.1.2004, p. 44.

2. Those actions shall include:

(a) studies, evaluations, expert reports, statistics, including those of a general nature concerning the operation of the Fund;

(b) measures aimed at the partners, the beneficiaries of assistance from the Fund and the general public, in particular information measures;

(c) the installation, operation and interconnection of computerised systems for management, monitoring, inspection and evaluation;

(d) improvements in evaluation methods and the exchange of information on practices in this field.

Article 17

Technical assistance of the Member states

1. At the initiative of the Member State in question, 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 annual amount set aside for technical and administrative assistance may not exceed 4 % of the total annual amount of co-financing allocated to the Member State, plus EUR 30 000.

TITLE II
PROGRAMMING

Article 18

Adoption of multiannual guidelines.

1. For each multiannual programme, 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 of the multiannual programme.

2. For each of the objectives of the Fund, those guidelines shall in particular give effect to the priorities of the Community with a view to promoting the common basic principles.

3. The Commission shall adopt the strategic guidelines relating to the first multiannual programming period (2007-2010) on 31 March 2006, and those relating to the second multiannual programming period (2011-2013) on 31 March 2010.

4. The strategic guidelines shall be adopted in accordance with the procedure referred to in Article 51(2).

Article 19

Preparation and approval of national multiannual programmes

1. Each Member State shall for each programming period and on the basis of the strategic guidelines referred to in Article 18 propose a draft multiannual programme which shall include the following elements:

(a) a description of the current situation in the 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) 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) 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) indication of whether this strategy is compatible with other regional, national and Community instruments;

(e) information on the priorities and their specific targets. Those targets shall be quantified using a limited number of indicators for implementation, results and impact, taking into account the proportionality principle. The indicators must make it possible to measure the progress in relation to the baseline situation and the effectiveness of the targets implementing the priorities;

(f) a draft financing plan which sets out, for each priority and each year, the Fund's proposed financial contribution and the overall amount of public or private co-financing;

(g) the implementing provisions for the multiannual programme, including:

- designation by the Member State of all the entities stipulated in Article 24;
- description of the implementation, monitoring, control and evaluation systems, including description of measures taken to ensure complementarity of actions with those financed under the European Social Fund;
- a definition of the procedures for the mobilisation and circulation of financial flows in order to ensure their transparency;

– the provisions laid down to ensure that the multiannual programme is publicised.

2. The Member States shall establish each multiannual programme in close cooperation with the partners referred to in Article 12.

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

4. The Commission shall appraise the proposed multiannual programme in light of the following :

(a) its consistency with the objectives of the Fund and the strategic guidelines defined in Article 18,

(b) the relevance, appropriateness and expected results of the strategy and operational priority themes proposed by the Member State;

(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 set out in this Decision;

(d) its compliance with Community law and in particular with Community law aiming at ensuring the free movement of persons in conjunction with the directly related flanking measures with respect to external borders controls, asylum and immigration.

5. Where the Commission considers that a multiannual programme is inconsistent with the strategic guidelines or does not comply with the provisions of this decision setting out management and control arrangements, it shall request the Member State to revise the proposed programme accordingly.

6. The Commission shall adopt each multiannual programme within four months following its formal submission, in accordance with the procedure referred to in article 51(2).

Article 20

Revision of multiannual programmes

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

2. The Commission shall adopt a decision on the revision of the multiannual programme as soon as possible after the formal submission of a request by the Member State concerned.

Article 21

Annual programmes

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

2. The Commission shall provide the Member States, no later than 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 14.

3. The Member States shall submit to the Commission, no later than 1 November of each year, a draft annual programme for the following year, established in accordance with the multiannual programme and including:

   (a) the general rules for selection of projects to be financed under the annual programme;

   (b) a description of the tasks to be carried out by the responsible authority when implementing the annual programme;

   (c) the proposed financial breakdown of the Fund's contribution between the programme's various actions and an indication of the amount requested to cover technical assistance under Article 17 for the purpose of implementing the annual programme.

4. When examining the Member State's proposal, the Commission shall take account of the final amount of the appropriations allocated to the Fund under the budgetary procedure and shall adopt the financing decision from the Fund no later than 1 March of the year in question. The decision shall indicate the amount allocated to the Member State and the period for which the expenditure is eligible.

CHAPTER V
MANAGEMENT AND CONTROL SYSTEMS

Article 22

Implementation

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

Article 23

General Principles in the management and control systems

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

(a) a clear definition of the functions of the bodies and / or departments concerned in management and control and a clear allocation of functions within each body;

(b) a clear separation of functions between bodies concerned in management, certification of expenditure and control and between those functions within each body;

(c) adequate resources for each body and / or department to carry out the functions which have been allocated to it throughout the period of implementation of actions financed by the Fund;

(d) effective internal control arrangements of the responsible authority and any delegated authority;

(e) reliable accounting, monitoring and financial reporting systems in computerised form;

(f) effective systems of reporting and monitoring where the performance of tasks is delegated;

(g) detailed manuals of procedures in relation to the functions to be performed;

(h) effective arrangements for the audit of the functioning of the system;

(i) systems and procedures to ensure a sufficient audit trail;

(j) procedures concerning the reporting and the monitoring of irregularities and the recovery of amounts unduly paid.

Article 24

Designation of authorities

1. For each multiannual programme 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, which shall be responsible for the management of multi-annual and annual programmes supported by the Fund and shall handle all communication with the Commission;

(b) a certifying authority: national public authority or body operationally independent of any authorising department of the responsible authority, designated by the Member State to certify declarations of expenditure and applications for payment before they are sent to the Commission;

(c) an audit authority: national public authority or body operationally independent of the responsible authority designated by the Member State and responsible for verifying the sound operation of the management and control system;

(d) where appropriate, a delegated authority;

(e) a compliance assessment body which shall be designated at the time of the submission to the Commission of each draft multiannual programme. The Commission may accept the designated audit authority as the compliance assessment body where it has the necessary capacity and operational independence. It must carry out its work according to international audit standards.

2. The Member State shall lay down rules governing its relations with those authorities and bodies and their relations with the Commission.

3. Subject to Article 23 (b), control and certification functions may be carried out by the same body or department.

4. The rules for implementing Articles 25 to 29 shall be adopted by the Commission in accordance with the procedure referred to in Article 51(2).

Article 25

Responsible authority

1. The responsible authority may be a body of the Member State itself, a national public body as well as a body governed by the private law of the Member State and which has a public-service mission. Where the Member State designates a responsible authority which is not a body of the Member State itself, it shall lay down all the arrangements governing its relations with the said authority and the latter's relations with the Commission.

2. 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.

3. The Member State shall provide the responsible authority with adequate funding so that it can carry out its tasks properly and uninterruptedly throughout the period 2007-2013.

Article 26

Tasks of the responsible authority

1. The responsible authority shall have responsibility for efficient, effective and correct managing and implementation of the multiannual programme.

It shall in particular:

(a) consult relevant partners (non-governmental organisations, local authorities, competent international organisations, social partners etc.) through the partnership established in Article 12;

(b) submit to the Commission the proposals for multiannual and annual programmes defined in Articles 19 and 21;

(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 European Social Fund;

(d) organise and advertise calls for tenders and calls for proposals;

(e) organise selection and award procedures for Fund co-financing in accordance with the principles of transparency, equal treatment and non-combination of grants;

(f) receive payments made by the Commission, and make payments to the beneficiaries ;

(g) ensure consistency and complementarity between co-financing under the Fund and from other relevant national and Community financial instruments;

(h) verify the delivery of the co-financed products and services and 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 detailed 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 beneficiaries and other bodies involved in the implementation of actions cofinanced by the Fund maintain either a separate accounting system or an adequate accounting code for all transactions relating to the operation;

(k) ensure that the evaluations of multiannual programmes referred to in Article 48 are carried out within the time limits laid down in this Decision 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 42;

(m) ensure that the audit authority receives, for the purposes of carrying out the audits defined in Article 29(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 audits carried out in relation to expenditure for the purpose of certification;

(o) draw up and submit to the Commission reports, statements of expenditure certified by the certifying authority and applications for payment;

(p) carry out information and advisory activities; and disseminate of results of supported actions;

(q) cooperate with the Commission and the responsible authorities in the other Member States.

5. The responsible authority's management activities for projects implemented in the Member States can be financed under the technical assistance arrangements referred to in Article 17.

Article 27

Delegation of task 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 25.

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 28

Certifying authority

1. The certifying authority of a multiannual programme shall:

(a) certify that:

– the statement of expenditure is accurate, results from reliable accounting systems and is based on verifiable supporting documents,

– 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) 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;

(c) ensure for the purposes of certification that it has received adequate information from the responsible authority on the procedures and audits carried out in relation to expenditure included in statements of expenditure;

(d) take account for the purposes of certification of the results of all audits carried out by or under the responsibility of the audit authority;

(e) maintain accounting records in computerised form of expenditure declared to the Commission;

(f) ensure the recovery of any Community financing found to have been unduly paid as a result of irregularities detected, together with interest where appropriate, keeping an account of amounts recoverable and repaying amounts recovered to the Commission, where possible by deducting them from the next statement of expenditure.

2. The certifying authority's activities relating to projects implemented in the Member States can be financed under the technical assistance arrangements referred to in Article 17, provided that the prerogatives of this authority as described in Article 24 are respected.

Article 29

Audit authority

1. The audit authority of a multiannual programme shall:

(a) ensure that audits are carried out in accordance with international audit standards to verify the effective operation of the management and control system of the multiannual programme;

(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), the method to be used, the

sampling method for audits on actions supported by the Fund and the indicative planning of audits to ensure that the main beneficiaries of cofinancing by the Fund are audited and that audits are spread evenly throughout the programming period.

2. Where the designated audit authority under this decision is also the designated audit authority under Decisions….., …… and …… [63], or where common systems apply to two or more of these Funds, a single combined audit strategy may be submitted under paragraph 1 point c).

3. The audit authority shall draft a final report on the implementation of the annual programmes as defined in Article 49(2), 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 reporting any shortcomings found in the systems for the management and control of the programme.

(b) an opinion as to whether the management and control system has functioned effectively to give a reasonable assurance on the correctness of the statements of expenditure presented to the Commission and the legality and regularity of the underlying transactions.

(c) a declaration assessing the validity of the application for payment of the final balance and the legality and regularity of the underlying transactions covered by the final statement of expenditure.

4. Where the audits referred to in paragraph 1 are carried out by a body other than the audit authority, the audit authority shall ensure that such bodies have the necessary operational independence and that the work is performed according to internationally accepted audit standards.

5. The activities of the audit authority or of the body referred to in paragraph 4 relating to projects implemented in the Member States can be financed under the technical assistance arrangements referred to in Article 17, provided that the prerogatives of this authority as described in Article 24 are respected.

CHAPTER VI
CONTROLS

Article 30

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.

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63 Insert references to decisions establishing the ERF, the External borders fund and the return fund.

2. They 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 23 to 29 to ensure that Community financing is used efficiently and correctly.

3. The Member States shall prevent, detect and correct irregularities. They shall notify these to the Commission, and keep the Commission informed of the progress in the administrative and legal proceedings.

When amounts unduly paid to a beneficiary cannot be recovered, the Member State is responsible for reimbursing the amounts lost to the budget of the European Communities.

4. Member States shall be primarily responsible for the financial control of actions and shall ensure that management 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. Member States shall cooperate with the Commission for the collection of the statistics needed for the implementation of Article 14.

6. The detailed rules for implementing paragraphs 1 to 5 shall be adopted in accordance with the procedure referred to in Article 51(2).

Article 31

Management and control systems

1. Prior to the adoption of a multiannual programme, the Member States shall ensure that management and control systems have been set up in accordance with Articles 23 to 29. 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 each draft multiannual programme, a description of the organisation and procedures of the responsible authorities, delegated authorities and certifying authorities, and the internal audit systems operating in those authorities and bodies, the audit authority, and any other bodies carrying out audits under its responsibility.

3. Within three months of the submission to the Commission of each draft multiannual programme, the Member States shall submit a report by the compliance assessment body setting out the results of an assessment of the systems and giving an opinion on their compliance with Articles 23 to 28. In the event that the opinion contains reservations, the report shall indicate the shortcomings and their seriousness. The Member States shall draw up, in agreement with the Commission, a plan setting out the corrective measures to be taken and the timetable for their implementation.

4. The detailed rules for implementing paragraphs 1 to 3 shall be adopted in accordance with the procedure referred to in Article 51(2).

Article 32

Responsibilities of the Commission

1. The Commission shall satisfy itself in accordance with the procedure laid down in Article 31 that the Member States have set up management and control systems that comply with Articles 23 to 29, and on the basis of the annual audit reports and its own audits that the systems function effectively during the period of implementation of the multiannual programmes.

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

3. The Commission may require Member States 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 audits.

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.

Article 33

Cooperation with the control bodies of the Member States

1. The Commission shall cooperate with the audit authorities of multiannual programmes to coordinate their respective control plans and audit methods and shall immediately exchange the results of audits carried out on 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 29 not later than three months or at the first meeting following its reception.

2. In determining its own audit strategy, the Commission shall identify those multiannual programmes

   (a) which comply with the system established under Article 31 without reservations or for which reservations have been withdrawn following corrective measures and

(b) for which the audit strategy of the audit authority under Article 29 is satisfactory and where reasonable assurance has been obtained that the management and control systems function effectively on the basis of the results of audits by the Commission and the Member State.

For those programmes, the Commission may inform the Member States concerned that it will rely principally on the opinion of the audit authority as to the correctness, legality and regularity of expenditure declared and will carry out its own on-the-spot audits only in exceptional circumstances.

CHAPTER VII
FINANCIAL MANAGEMENT

Article 34

Eligibility – declarations of expenditure

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

2. Expenditure shall correspond to the payments effected by the beneficiaries. It shall be justified by receipted invoices or accounting documents of equivalent probative 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 Commission decision on co-financing indicated in Article 21(4). Actions co-financed must not have been completed before the starting date for eligibility.

4. The following expenditure shall not be eligible for a contribution from the Fund :

   – VAT;

   – interest on debt;

   – the purchase of land for an amount exceeding 10% of the total eligible expenditure for the operation concerned;

   – housing.

5. The rules governing eligibility of expenditure within the framework of actions co-financed by the Fund in the Member States under Article 4 shall be adopted in accordance with the procedure provided for by Article 51(2).

Article 35

Wholeness of payment to beneficiaries

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

Article 36

Use of the euro

All amounts mentioned in the financing decisions by the Commission, in the commitments and payments made by the Commission as well as the amounts of certified expenditure and requests for payment from the Member States shall be expressed and carried out in euro.

Article 37

Commitments

Community budgetary commitments shall be made annually on the basis of the Commission financing decision referred to in Article 21(4).

Article 38

Payments - Prefinancing

1. Payments by the Commission of the contribution from the Funds 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 pre-financing payment representing 50% of the amount allocated in the Commission's financing decision shall be made to the Member State within sixty days following the adoption of the financing decision.

4. A second pre-financing payment shall be made no more than three months after the Commission has approved a progress report on implementation of the annual programme and a certified declaration of expenditure drawn up in accordance with Articles 27(a) and 33, accounting for at least 70% 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 co-financing decision or, in any event, 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. Interests generated by pre financing payments shall be assigned to the programme concerned and must be deducted from the amount of public expenditure declared in the final statement of expenditure.

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

Article 39

Balance payments

1 The Commission shall pay the balance provided it has received the following documents within nine months from the end date of eligibility of costs defined in the annual decision on co-financing by the Fund:

(a) a certified declaration of expenditure and a request for payment of the balance or declaration of reimbursement duly drawn up in accordance with Articles 28(a) and 34;

(b) the final implementation report for the annual programme, including the information set out in Article 50;

(c) the audit report, opinion and declaration provided for in Article 29(3).

The payment of the balance is subject to the acceptance of the final implementation report and of the statement of validity for the request for payment of the balance.

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

3. The automatic cancellation procedure defined in paragraph 2 shall be suspended, for the amount of the projects concerned, where legal proceedings or administrative appeal having suspensory effects are ongoing at Member State level at the time of submission of the documents defined in paragraph 1. The Member State shall, in the partial final report submitted, give detailed information on such projects, and send reports on progress made with regard to these projects every 6 months. Within 3 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 be interrupted if the Commission has adopted a decision suspending payments of the co-financing for the relevant annual programme in accordance with the provisions of Article41. The period shall start to run again from the date when the Commission decision referred to in Article 41(3) has been notified to the Member State.

5. Without prejudice to the provisions of Article 40, the Commission shall, within six months of receiving the documents referred to in paragraph 1, 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 the Member States.

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

Article 40

Interruption

1. The payment deadline shall be interrupted by the authorising officer by delegation within the meaning of Regulation (EC, Euratom) No 1605/2002 for a maximum period of six months if there are doubts as to the proper functioning of the management and control systems or if the authorising officer requires additional information from the national authorities in the process of monitoring the observations made under the annual review, or if s/he suspects that serious irregularities, detected or presumed, are present in the expenditure declared.

   The Commission shall inform the Member State concerned and the responsible authority immediately of the reasons for the interruption. The Member State shall take the necessary steps to correct the situation as soon as possible.

2. The maximum period of six months shall be extended for another maximum period of six months if it proves necessary to adopt a decision in accordance with Articles 41 and 44.

Article 41

Suspension

1. All or part of the pre-financing and balance payments 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 statement 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 30 and 31**.**

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

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

4. If the required measures are not taken by the Member State, the Commission may adopt a decision to reduce the net amount or cancel the Community contribution to the annual programme in accordance with Article 45.

Article 42

Conservation of documents

The responsible authority shall ensure that all the supporting documents regarding expenditure and audits on the annual programme concerned are kept available for the Commission and the Court of Auditors.

The documents shall be kept available at least for a period three years following the closure of an annual programme, without prejudice to the rules governing State aid. This period shall be interrupted either in the case of legal proceedings or at the request of the Commission stating the reasons.

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

CHAPTER VIII
FINANCIAL CORRECTIONS

Article 43

Financial corrections established by the Member States

1. Without prejudice to the Commission's responsibilities for implementing the general budget of the European Communities, the Member States shall be primarily responsible for investigating irregularities. They shall act upon evidence of any major change affecting the nature or the conditions for the implementation or control of assistance and make the required financial corrections.

2. The Member State shall make the financial corrections required in connection with the individual or systemic irregularities detected in actions or annual programmes. The corrections made by the Member States shall consist in recovering all or part of the Community contribution. The Member State shall take into account the nature and gravity of the irregularities and the financial loss to the Fund.

3. Member States shall include in the annual report sent to the Commission under Article 49(2) a list of cancellation proceedings initiated for the annual programme concerned.

The corrections made by the Member State shall consist in cancelling all or part of the Community contribution, and, 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 by Article 46(2).

4. In the case of systemic irregularities the Member State shall extend its enquiries to cover all operations liable to be affected.

Article 44

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 servants may carry out on-the-spot checks, including sample checks, on the operations financed by the Fund and on management and control systems with a minimum of one working day's notice. The Commission shall give notice to the Member State concerned with a view to obtaining all the assistance necessary. Officials or servants 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 correctness of one or more transactions. Commission officials or servants 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 Articles 29, it shall suspend the pre financing or final payment in accordance with Article 41.

Article 45

Criteria for the corrections

1. If the Member State has not made the corrections within the period as provided for in Article 41(2) and if no agreement has been reached, the Commission may decide within three months to cancel all or part of the Community contribution to an annual programme when 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 statement 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 case of irregularity relates to a statement of expenditure for which a positive assurance had previously been given in accordance with the Article 29(3)(b) in an annual report, 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 31, the reports of notified irregularities and any replies from the Member State.

Article 46

Repayment

1. Any repayment due to be made to the Commission shall be effected before the due date indicated in the order for recovery drawn up in accordance with Article 72 Council Regulation (EC, Euratom) N° 1605/2002[64]. 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 Communities, in force on the first calendar day of the month in which the due date falls, increased by three and a half percentage points.

Article 47

Obligations of Member States

A financial correction by the Commission shall not prejudice the Member State's obligation to pursue recoveries under Article 45.

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64 OJ L 351, 28.12.2002.

CHAPTER IX
MONITORING, EVALUATION AND REPORTS

Article 48

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 regularly by the Commission in partnership with the Member States to assess the relevance, effectiveness and impact of actions in the light of the objectives referred to in Article 2.

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

Article 49

Reports

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.

2. No later than nine months after the eligibility deadline for expenditure laid down in the co-financing decision for each annual programme, the responsible authority shall submit a final implementation report and a final declaration of expenditure to the Commission as provided by Article 34.

3. The Member States shall submit to the Commission:

   (a) no later that 30 June 2010, an evaluation report on the implementation of actions co-financed by the Fund;

   (b) no later than 30 June 2012 (for the period 2007-2010) and 30 June 2015 (for the period 2011-2013) respectively, an evaluation report on the results and impact of actions co-financed by the Fund.

4. The Commission shall submit to Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions:

(a) no later than 30 June 2009, a report on the application of the criteria set out in Article 14 for the annual breakdown of resources between member States; together with proposals for amendments if deemed necessary;

(b) no later than 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) no later than 31 December 2012 (for the period 2007-2010) and 31 December 2015 (for the period 2011-2013) respectively, an ex post evaluation report.

Article 50

Final annual report

1. The reports referred to in Article 49(2) shall include the following information in order to obtain a clear view of the implementation of the annual and multiannual programmes:

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

(b) the progress made in implementing the multiannual programme and its priorities in relation to their specific, verifiable targets, with a quantification, wherever and whenever they lend themselves to quantification, of the physical indicators and the indicators of implementation, results and impacts for each priority;

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

– monitoring and evaluation measures, including data collection arrangements;

– a summary of any significant problems encountered in implementing the operational programme and any measures taken ;

– the use made of technical assistance;

– the measures taken to provide information on and to make public the annual and multiannual programmes.

2. The reports shall be judged acceptable where they contain all the information listed in paragraph 1. The Commission shall reach a decision on the content of the annual report on implementation submitted by the Responsible Authority within two months. If the Commission does not respond within the time limit laid down, the report shall be deemed to be accepted.

CHAPTER IX
GENERAL AND FINAL POVISIONS

Article 51

Committee

1. The Commission shall be assisted by the common Committee "Solidarity and Management of Migration Flows", established by the Decision establishing the External Borders Fund for the period 2007-2013 as part of the General programme 'Solidarity and Management of Migration Flows' ../… [65] ("the "committee").

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

3. The Committee shall adopt its Rules of Procedure.

TITRE VII
FINAL PROVISIONS

Article 52

Review

1.

The Council shall review this Decision on the basis of a proposal from the Commission by 30 June 2013 at the latest.

Article 53

Entry into force

This Decision shall apply from 1 January 2007.

Article 54

Addressees

This Decision is addressed to the Member States.

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[65] Insert references to decisions establishing the ERF, the External borders fund and the return fund.

Done at Brussels,

For the Council
The President

EXPLANATORY MEMORANDUM

1. DEVELOPING SOLIDARITY IN THE AREA OF RETURNING ILLEGALLY STAYING THIRD COUNTRY NATIONALS

1.1. Problem statement and analysis

The return of third country nationals who do not, or no longer, fulfil the conditions for entry to, presence in, or residence on the territories of the Member States of the European Union either because they entered illegally or overstayed their visa or residence permit, or because their asylum claim has been finally rejected is essential.

This is essential to ensure that admission policy is not undermined and to enforce the rule of law, which is a constituent element of an area of freedom, security and justice.

In practice, however, putting into effect return policy is a considerable challenge, in particular for Member States with relatively low GDP's and little experience. Return management is a complex process: it requires the development of good working relationships with the countries of return, whilst balancing individual rights and humanitarian considerations with the state interest in law enforcement. Illegal situations are often de facto allowed to continue and Member States tend to incur substantial and ongoing costs in detaining the people concerned for long periods as well as in engaging in protracted legal battles over their removal.

Reducing illegal immigration through an effective return policy is a concern of all Member States. In an area without internal borders, persons can in principle move without hindrance. Tolerance of illegal stay in one Member State may negatively affect the fight against illegal employment throughout the EU which in turn, acts as a pull factor for more illegal immigration to the EU. Conversely, effective return policies throughout the EU could have beneficial effects on the credibility of the common immigration policy and help to increase the acceptance of legally staying third-country nationals in Member States.

1.2. The way forward

Given the extent of the difficulties involved, Member States are much more likely to overcome them if they act collectively rather than individually – in particular, if they follow models which have resulted in successful but fair implementation of the return policies in several Member States, in particular the concept of 'integrated return management', which seek to minimise risks and impediments.

In addition to implementing at national level practices, based on past successful experiences, Member States could also share more information on return management processes, the people who have had removal orders served against them, on the experience of implementing different measures and incentives to encourage voluntary return and on conditions in third countries. Finally, the cost of return operations and of assistance and support in these countries before and after their return could be shared more across Member States.

However, this must be based upon a common interpretation of who can be returned and how to proceed in implementing return policy. The Commission is currently elaborating a proposal for a Directive on common standards on procedures in Member States for returning illegally

staying third country nationals. The Directive will introduce a level playing field in the EU on return procedures. Such standards cannot address the problems identified in terms of the effectiveness of the implementation of return policy, but will be another essential part of the comprehensive EU return policy.

Moreover, the actions supported by the Fund should be implemented in conformity with human rights standards.

In The Hague Programme the European Council called for the establishment of a Return Fund.

1.3. Objectives of the Fund

The main objectives of the Fund are the following:

- The introduction and improvement of the organisation and implementation of integrated return management by Member States;
- The enhancement of the co-operation between Member States in the framework of integrated return management and its implementation;
- The promotion of an effective and uniform application of common standards on return according to the policy development in the field.

The Fund would in principle cover the return of both immigrants and asylum seekers who have received a negative decision.

Financing return measures for rejected asylum seekers under the European Refugee Fund shall become ineligible only from 1 January 2008, in order to allow for the full implementation of the first multiannual programming cycle under the current decision.

This year the Commission will initiate preparatory actions in the area of return. The preparatory actions will take place in 2005 and 2006. In order to take into account as much as possible the (first) results of these preparatory actions, it is proposed to start the implementation of the Fund only in 2008. Consequently, there is no funding foreseen in 2007.

2. LEGAL BASIS AND RATIONALE OF THE POLICY INSTRUMENT

2.1. Choice of legal basis

The proposed legal basis for this Council Decision is Article 63, paragraph 3, point (b) because this legislation involves "measures on immigration policy" within the area of "illegal immigration and illegal residence, including repatriation of illegal residents".

In accordance with the Council Decision of 22 December 2004 providing for certain areas covered by Title IV of Part Three of the Treaty establishing the European Community to be governed by the procedure laid down in Article 251 of that Treaty (2004/927/EC) the Council shall act in accordance with the procedure laid down in Article 251 of the Treaty when adopting measures referred to in Article 63 (2) (b).

Because the proposal is based on Title IV of the EC Treaty (Visas, asylum, immigration and other policies related to free movement of persons), it must be presented and adopted in accordance with the protocols on the position of the United Kingdom, Ireland and Denmark, annexed to the Treaty of Amsterdam. The United Kingdom and Ireland have the possibility to opt in this measure. Denmark will not take part in the adoption of this Decision, and is not bound by it or subject to its application.

Expressing solidarity in the allocation of the resources

The methodology for allocation of resources to the Member States would be similar to the one set out in the Council Decision establishing the ERF for the period 2005 – 2010.

First, to express that many Member States (and in particular the new Member States) would need to make some structural investments to successfully return illegally staying third country nationals, Member States will be allocated a fixed amount each year. This amount will be higher for the period 2008 - 2013 for the states which acceded to the European Union on 1 May 2004. Moreover, this amount will also be higher for Member States which accede to the European Union in the period 2008 – 2013 for the duration of the period 2008 - 2013 from the year after their accession.

Second, to express the notion of solidarity, the bulk of the allocations to the Member States would be determined on the basis of a distribution key defining the relative burden of Member States in relation to return management. The distribution key would consist of two components: one relating to the number of third country nationals who are subject to a return decision obliging them and/or informing them of the obligation to leave the territory of the Member State and one relating to successful past returns. For the first component the total of third country nationals who are subject to such a decision over the past previous three years will be added up. This total would then roughly correspond to the number of persons whose situation is under consideration for removal by the authorities in the given reference period. After all, a time lag between the decision and the actual departure is often inevitable: the removal itself (the act of enforcing the return decision) may require a specific decision in some Member States and/or is subject to specific proceedings (including, where necessary pre-removal detention). The second component would factor in past successful returns. Thus, there would be an in-built mechanism encouraging Member States to invest and improve return management and contribute to the reduction of illegal immigration throughout the EU. As the main emphasis should be put on future efforts the proportion between the two components will be respectively 70% – 30%.

The definition of the category of persons who are subject to a return Decision should in principle correspond to the definition of this category in the future Council Directive.

It is proposed to exclude from this definition third country nationals having been refused entry in a transit zone of a MS, because it must be assumed that these persons have never entered EU territory and that they are not necessarily covered by the regime of the future Council Directive above-mentioned, while their actual return is usually covered by other instruments.

This is without prejudice to the possibility of Member States to direct funding to actions which would (also) cover this category of persons in accordance with the objectives for the Fund. The same applies to the voluntary return of third country nationals, who have not filed an asylum application and who are not (yet) illegally staying in the territory of a Member State.

2.2. Actions defined within the Fund

In view of the general objectives of the Fund of contributing to the implementation of return policies based on the concept of integrated return management, the Commission proposes to implement the Fund mainly through shared management with the Member States. This will allow for a financial support targeted in accordance with the specific situation and needs of each Member State.

Furthermore, to ensure the use of funds in the most efficient way, the proposal contains very detailed provisions as regards the operational objectives to be achieved as well as the types of actions identified as contributing to these objectives.

3. EVALUATIONS

So far there have only been funds available at Community level for support to administrative cooperation in the area of return (ARGO). These actions have mainly focused on studies of best practices and the transferral of such information between authorities and other stakeholders such as IOM.

The Commission carried out an ex ante evaluation, which is annexed to this proposal.

4. SUBSIDIARITY AND PROPORTIONALITY

Subsidiarity

The fundamental principle remains that of Member States' responsibility for the development and implementation of return management in all its dimensions. National budgets will therefore remain the main source of investments and planned spending. However, national efforts to implement the principle of integrated return management in accordance with the common standards can be supported by a Fund in view of the implications of these policies for the other Member States. The actions to be supported must therefore clearly be identified, linked to objective conditions in individual states and bringing added value to the Community as a whole.

Proportionality

The decision will make it possible to provide financial support from the Fund to a list of actions which contribute operationally to a series of identified specific objectives, while leaving the Member States to select the actions and the way in which they are to be carried out under schemes agreed in conjunction with the Commission. The Fund must be a strategic tool which will contribute to the development of national return strategies. The use of Community appropriations must also be subject to clear and uniform rules contained in a Council decision, which is the appropriate instrument for implementing Community programmes.

5. BUDGETARY IMPLICATIONS

No funding is foreseen for 2007. The financial allocation for the Fund under the Financial Perspectives proposed by the Commission for the 2008-2013 period is EUR 759 million.

For the distribution of financial resources between Member States the Commission intends to apply a method based on objective criteria. In order to reflect the actual situation in each Member States, the criteria primarily relate to "the target group". This will ensure that evolutions (relating for example to changes in admission policy) are duly taken into account in the financial allocation method, allowing corrective action to be taken with the support of the Fund.

2005/0049 (COD)

Proposal for a

DECISION OF THE EUROPEAN PARLIAMENT AND COUNCIL

establishing the European Return Fund for the period 2007-2013 as part of the General programme 'Solidarity and Management of Migration Flows'

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the Commission[66],

Having regard to the opinion of the Economic and Social Committee[67],

Having regard to the opinion of the Committee of the Regions[68],

Acting in accordance with the procedure laid down in Article 251 of the Treaty[69]

Whereas:

(1) With a view to the progressive establishment of an area of freedom, security and justice, the Treaty establishing the European Community provides both for the adoption of measures aimed at ensuring the free movement of persons, in conjunction with flanking 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 special meeting in Tampere on 15 and 16 October 1999, reaffirmed its resolve to create an area of freedom, security and justice. For that purpose, a common European policy on asylum and migration should aim both at fair treatment of third country nationals and better management of migration flows.

(3) An effective Community return policy is a necessary complement to a credible legal immigration and asylum policy as well as an important component in the fight against illegal immigration. Considerable budgets are earmarked by Member States in view of implementing return programmes and forced return operations. Common action of the European Union in this field, backed with appropriate financial means from the Community, could support Member States, underline the necessity of the return of illegal residents and contribute to enhanced solidarity among Member States.

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66 OJ C …
67 OJ C …
68 OJ C …
69 OJ …

(4) The Council on 28 February 2002 adopted the Comprehensive Plan to combat illegal immigration and trafficking of Human beings in the European Union70 in which it stressed that a readmission and return policies constitute an integral and vital component in the fight against illegal immigration and identified two elements on which a Community return policy should be based, namely common principles and common measures, within the framework of improving the administrative co-operation between Member States.

(5) The Return Action Programme of the Council on 28 November 2002, based on the Commission's Communication of 14 October 2002 on a Community return policy on illegal residents, addresses the entire chain of action with respect to return management in Member States, covering both forced and voluntary return of third country nationals as well as the central stages of return, including preparation and follow-up.

(6) The European Council, at its meeting in Thessaloniki on 19 and 20 June 2003, called on the Commission to examine all aspects relating to a separate Community instrument on return in order to support, in particular the priorities as set out in the Return Action Programme.

(7) Following the Conclusions of 8 June 2004 in which the Council called on the budgetary authority to make preparatory actions available and invited the Commission to take into account its view on the development of integrated return plans in close co-operation with Member States, preparatory actions were initiated for the period 2005 and 2006.

(8) The European Council, at its meeting in Brussels on 4 and 5 November 2004, called in "The Hague Programme" for launching the preparatory phase of a European Return Fund (hereafter the Fund) and the establishment of the Fund by 2007, taking into account the evaluation of the preparatory phase.

(9) In November 2004 the Council took note of the Presidency's report on an analysis of reported best practices of return to specific countries. The report stated ample possibilities and a need for more practical co-operation between Member States in the practice of return. The report indicated possibilities for a more integrated approach, on both national and community level, of return policy as well as general policies. Also, the report identified best practices by Member States regarding the voluntary or forced return of third country nationals to their country of origin or transit, such as the promotion of Assisted Voluntary Return Programmes for sustainable return, return counselling, and the organisation of joint return operations, including charter flights.

(10) It is necessary to endow the Community with an instrument designed to support and encourage the efforts made by the Member States to improve the management of return in all its dimensions, on the basis of the principle of integrated return management, and with a view to supporting a fair and effective implementation of common standards on return, as established under existing and future Community instruments relating to return.

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70 OJ C 142, 14.6.2002, p. 23.

(11) No funding should be foreseen for 2007 under this instrument, in order to be able to take into account the results of preparatory actions on return (2005-2006), on the basis of a report by the Commission on the evaluation of the preparatory actions;

(12) The common standards concerned are in particular Council Directive 2001/40/EC of 28 May 2001 on the mutual recognition of decisions on expulsion of third country nationals[71] and its corollary, Council Decision 2004/191/EC of 23 February 2004 setting out the criteria and practical arrangements for the compensation of the financial imbalances resulting from the application of the Directive 2001/40/EC of 28 May 2001 on the mutual recognition of decisions on expulsion of third country nationals[72] and Council Decision 2004/573/EC on the organisation of joint flights for removals from the territory of tow or more Member States, of third country nationals who are subjects of individual removal orders[73];

(13) This concerns also future Community instruments, such as an instrument on common standards on procedures in Member States for returning illegally staying third country nationals, which should create a level playing field in the European Union on return procedures and would therefore define conditions for and the margin within which Member States take return measures.

(14) To ensure the consistency of the Community's response to the return of illegally residing third country nationals, actions financed under this instrument should be specific and complementary to actions financed under the European Refugee Fund and the programming aimed at supporting development cooperation and economic cooperation with partner countries and regions which are not Member States or Overseas countries and Territories.

(15) In particular, this would mean that rejected asylum seekers should only be included under the actions of this instrument where they are no longer included under the return strand in the European Refugee Fund. Once the first multiannual cycle of the European Refugee Fund (2005 – 2007) has been completed, this instrument should also cover the rejected asylum seekers.

(16) This instrument is designed to form part of a coherent framework entitled the General programme 'Solidarity and Management in Migration Flows', which aims at addressing the issue of a fair share of 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 immigration, as developed in accordance with Title IV of the Treaty establishing the European Community.

(17) A primary objective of this instrument should be the promotion of integrated return management at national level. Member States are encouraged to implement return operations in the light of integrated return action plans, which analyse the situation in the Member State with respect to the targeted population, set targets with respect to the operations envisaged and, in cooperation with relevant stakeholders, such as UNHCR and IOM, offer return schemes focusing on effective and sustainable returns

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71 OJ L 149, 2.6.2001, p. 34.
72 OJ L 60, 27.2.2004, p. 55.
73 OJ L 261, 6.8.2004, p. 28.

through various measures. Where appropriate, integrated return plans should be regularly assessed and adjusted.

(18) To promote the voluntary return of persons complying with an obligation to leave, incentives for such returnees, such as preferential treatment by providing enhanced return assistance should be foreseen. This kind of voluntary return is both in the interest of a dignified return of returnees, as well as of the authorities in terms of the cost-effectiveness.

(19) However, from a policy point of view voluntary and enforced return are indissociable and Member States should be encouraged in their return management to reinforce the complementarity of the two forms. There is an obvious need to carry out forced returns in order to safeguard the integrity of the immigration and asylum policy of the European Union and the immigration and asylum systems of the Member States. Thus the possibility of forced return is a prerequisite for ensuring that this policy is not undermined and for enforcing the rule of law, which itself is essential to the creation of an area of freedom, security and justice. The instrument should therefore support actions of Member States to facilitate enforced return.

(20) Moreover, the major obstacles experienced by Member States in the field of return occur in relation to forced returns. One important obstacle is uncertainty concerning the identity of the person concerned and/or his or her lack of necessary travel documents. Countries of origin often delay or deny the issuing of return travel documents because of missing information on nationality or identity. In order to avoid removal, illegal residents may therefore hide or destroy their travel documents and not infrequently claim a completely false identity and/or nationality. As a consequence, lengthy and expensive procedures have often been conducted, which include presentation of the returnee at several embassies or conducting a language or dialect analysis. Member States should be encouraged to improve the co-operation with consular services of third countries and to increase the exchange of information and operational cooperation among themselves as regards the cooperation with such services.

(21) Lastly, it is imperative for this instrument to support in Member States, which consider it appropriate, specific measures for returnees in the country of return in order first to ensure effective return to their town or region of origin in good conditions and second to enhance their durable reintegration in their community. Such measures should not consist of assistance to the third country as such and are only eligible for funding when and insofar as there is a necessary continuation with activities initiated and in the main carried out in the territory of the Member States under an integrated return plan.

(22) The Agency, established in accordance with Council Regulation (EC) No 2007/2004 of 26 October 2004 establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (hereafter “the Agency”), has as one of its tasks to provide the necessary assistance for organising joint return operations of Member States and identify best practices on the acquisition of travel documents and the removal of third country nationals illegally present in the territories of the Member States. Accordingly, the Agency should ensure that the conditions for an effective co-ordinated return effort between Member States are met, whilst leaving the implementation and organisation of the joint return operations to the competent national services. Therefore, the Agency

should be able to use resources made available by Community actions in this instrument.

(23) The support provided by the Fund will be more efficient and better targeted if the co-financing of eligible actions is based on strategic multiannual programmes and on related annual work programmes drawn up by each Member State in cooperation with the Commission.

(24) On the basis of the strategic guidelines adopted by the Commission, each Member State should prepare a multiannual programming document taking into account its situation and needs and setting out its development strategy, which is negotiated with the Commission and decided by the Commission, and constitutes the framework for preparing the annual programmes.

(25) Multiannual programming should be directed towards achieving the Funds' objectives by ensuring the availability of the necessary financial resources and the consistency and continuity of joint action by the Community and the Member States.

(26) Multiannual programming should ensure coordination of this instrument with other existing financial instruments.

(27) In the context of shared management as referred to in Article 53(1), point 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[74], the conditions allowing the Commission to exercise its responsibilities for implementation of the general budget of the European Communities should be specified and the obligations for the cooperation on the Member States clarified. Applying these conditions will enable the Commission to satisfy itself that Member States are utilising the Fund in a lawful and correct manner and in accordance with the principle of sound financial management within the meaning of Article 27 of the Financial Regulation.

(28) The Commission should establish the indicative breakdown of available commitment appropriations using an objective and transparent method.

(29) Under technical assistance, this instrument should provide support for evaluations, improvement of administrative capacity linked to the management of the Fund, studies, pilot projects and exchanges of experience intended, in particular, to encourage innovative approaches and practices.

(30) Member States should adopt adequate measures to guarantee the proper functioning of management and control system. To this end, it is necessary to establish the general principles and the necessary functions which all programmes shall fulfil.

(31) It is necessary to provide for the designation of a single responsible authority in each Member State for the management of the Fund's interventions and to clarify its responsibilities. Designation and functions of the audit authority should be also foreseen. In addition, in order to guarantee uniform quality standards concerning the certification of expenditures before their transmission to the Commission and to

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74 OJ L 248,16.9.2002, p. 1.

clarify the nature and quality of the information on which declarations of expenditure are based, it is necessary to provide for the designation of the certification authority.

(32) In accordance with the principles of subsidiarity and proportionality, Member States have the primary responsibility for the implementation and control of the interventions.

(33) 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 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 modalities by which Member States ensure that the systems are in place and function satisfactorily.

(34) Without prejudice to the Commission's powers as regards financial control, cooperation between the Member States and the Commission in this field should be increased and the criteria should be established which allow the Commission to determine, in the context of its strategy of control of national systems, the level of assurance it can obtain from national audit bodies.

(35) The effectiveness and impact of actions supported by this instrument also depend on their evaluation. The responsibilities of the Member States and the Commission in this regard, and arrangements to ensure the reliability of evaluation, should be formalised.

(36) 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.

(37) This Decision establishes a financial framework for the entire duration of the programme, which is to be the principal point of reference for the budgetary authority within the meaning of point 33 of the interinstitutional agreement of 6 May 1999 between the European Parliament, the Council and the Commission on the budgetary discipline and improvement of the budgetary procedure[75].

(38) Since the objectives of the proposed action, namely to promote the return of illegally staying third country nationals within the framework of common standards and the principle of integrated return management, cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale and effects of the action, be better achieved 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 those objectives.

(39) 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.[76]

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[75] OJ C 172, 18.6.1999, p. 1.

[76] OJ L 184, 17.7.1999, p. 23.

(40) In accordance with Articles 1 and 2 of the Protocol on the position of Denmark annexed to the Treaty on European Union and the Treaty establishing the European Community, Denmark does not take part in the adoption of this Decision and is, therefore, not bound by it or subject to its application.

HAVE ADOPTED THIS DECISION:

TITLE I
OBJECTIVES AND GENERAL RULES

CHAPTER I
SUBJECT MATTER, OBJECTIVES AND ACTIONS

Article 1

Subject matter and scope

This decision establishes for the period from 1 January 2007 to 31 December 2013 the European Return Fund, hereinafter referred to as « The Fund », as part of the General programme "Solidarity and Management of Migration Flows", in order to contribute to the strengthening of the area of Freedom, Security and Justice.

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 ones as well as monitoring and control mechanisms based on a share of responsibilities between the Commission and the Member States.

Article 2

General Objectives of the Fund

1 The general objective of the Fund shall be to support the efforts made by the Member States to improve the management of return in all its dimensions through the use of the concept of integrated management, taking account of Community legislation in this field.

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

Article 3

Specific objectives

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

(a) The introduction and improvement of the organisation and implementation of integrated return management by Member States;

(b) The enhancement of the co-operation between Member States in the framework of integrated return management and its implementation;

(c) The promotion of an effective and uniform application of common standards on return according to the policy development in the field.

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

– are based on a comprehensive assessment of the situation in the Member State with respect to the targeted population and the challenges with respect to the operations envisaged (such as those related to obtaining travel documents and other practical obstacles to return). The comprehensive assessment shall be drawn up in co-operation with all relevant authorities and partners; and

– aim to achieve a wide set of measures encouraging voluntary return schemes of third country nationals illegally residing on its territories, and, where necessary, implementing enforced return operations with respect to these persons, in full compliance with humanitarian principles and respect for their dignity; and

– include the choice for a target group based on the relevant caseload; and

– include a planning and/or time table and, where appropriate, foresee a periodic evaluation mechanism allowing for adjustment of the planning and assessment of the impact of the plan in practice.

3. Integrated Return Plans shall focus in particular on effective and sustainable returns through such actions as efficient information at pre-departure stage, travel arrangements, transit in the country of return for both voluntary and enforced return. As far as possible, incentives for voluntary returnees, such as enhanced return assistance, may be foreseen in order to promote voluntary return.

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

Article 4

Eligible actions in the Member States

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

(a) Establishment or improvement of an effective, stable and lasting operational co-operation of Member States' authorities with consular authorities and immigration services of third countries, with a view to

obtaining travel documents for the return of third country nationals and ensuring speedy and successful removal procedures;

(b) Promotion and facilitation of voluntary returns of illegally staying third country nationals, in particular through assisted voluntary return programmes, with a view to ensuring the sustainability of returns;

(c) Simplification and implementation of enforced returns of illegally staying third country nationals, with a view to enhancing the credibility and integrity of immigration policies and reducing the period of custody of persons waiting for forced removal.

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

(a) The operation in the gathering and provision to potential returnees of information on the country of origin;

(b) Co-operation in developing effective, stable and lasting operational working relationships between Member States' authorities and consular authorities and immigration services of third countries, to facilitate consular assistance in obtaining travel documents for the return of third country nationals and ensuring speedy and successful removal procedures;

(c) Design of joint integrated return plans and their implementation, including joint voluntary return programmes on specific countries or regions of origin, former residence or transit;

(d) Studies on the current situation and possibilities for enhancing administrative co-operation among Member States in the field of return as well as on the role of international and non-governmental organisations to be played in this context;

(e) Exchange of information, support and advice in dealing with the return of particularly vulnerable groups;

(f) Organization of seminars for practitioners on best practices focusing on specific third countries and/or regions;

(g) Joint measures enabling the reception of readmitted persons in countries of origin, former residence or transit;

(h) Joint development of actions to ensure the durable reintegration of persons in the country of origin or former residence;

(i) Joint measures to monitor the situation of returnees and sustainability of their situation after return.

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

(a) Enhancement of the capacity of competent authorities to take high quality return decisions as quickly as possible;

(b) Enhancement of the capacity of competent administrative authorities to execute/enforce speedily removal decisions in full respect of human dignity and the relevant European security standards regarding such operations;

(c) Enhancement of the capacity of judicial bodies to more quickly assess return decisions appealed;

(d) Organization of seminars and joint training for the staff of the competent administrative, law enforcement and judicial bodies concerning legal and practical aspects of return operations;

(e) Enhancement of the capacity of competent administrative authorities to effectively implement common arrangements on mutual recognition and joint return operations, including the recommendations, operational standards and best practices defined by the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union in the area of return.

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

5. Actions shall take account of the specific situation of vulnerable persons such as minors, unaccompanied minors, disabled people, elderly people, pregnant women, single parents with minor children, and persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence.

Article 5

Eligible measures in the Member States

Actions supported may include the following measures:

– In all cases of return pre-return information, procurement of indispensable travel documents, costs of necessary pre-return medical checks, costs of travel and food for returnees and escorts, including medical staff, accommodation for escorts, specific assistance to vulnerable groups such as children or people with disabilities, costs of transportation to the final destination in the country of return and co-operation with the authorities of the country of origin, former residence or transit;

– Additionally, in the case of forced return of illegally residing third country nationals, costs for temporary accommodation of returnees and their escorts from the participating Member State in the organising Member State prior the departure in case of joint return operations;

– Additionally, in the case of voluntary return of illegally residing third country nationals, comprehensive pre-return information, assistance and counselling as well as essential expenses before return;

– Additionally, and where considered appropriate by Member States, initial expenses after return, transport of the returnee's personal belongings, adequate temporary accommodation for the first days after arrival in the country of return in a reception centre or a hotel if necessary, training and employment assistance and limited start-up support for economic activities where appropriate;

– Education and training of staff of the competent administrative, law enforcement and judicial bodies, secondments of these categories of staff from other Member States in order to ensure an effective and uniform application of common standards on return and enhance cooperation, as well as missions to assess the results of return policies in third countries;

– In the case of operational co-operation with consular authorities and immigration services of third countries with a view to obtaining travel documents and ensuring speedy removal procedures, cost of travel and accommodation in the Member States for the staff of the authorities and services responsible for the identification of third country nationals and the verification of their travel documents;

– In the case of reintegration measures to enhance the sustainability of return pursuant to the notion of integrated return management and, where Member State consider it appropriate, cash incentives and other short term measures necessary to launch the progress of reintegration for the returnee's personal development such as training, placement and employment assistance, start up support for economic activities and post-return assistance and counselling, as well as measures enabling Member States to offer appropriate arrangements for welcoming returnees in third countries upon their arrival.

Article 6

Actions of interest to the Community

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 ("Community actions") concerning immigration and integration policy and measures applicable to the target group as referred to in Article 7.

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

   (a) further Community cooperation in implementing Community law and good practices;

   (b) support the setting-up of transnational cooperation networks and pilot projects based on transnational partnerships between bodies located in two or more Member States designed to stimulate innovation, facilitate exchanges of experience and good practice and improve the quality of return policy;

   (c) support transnational awareness-raising campaigns;

   (d) support studying, disseminating and exchanging information, including the use of state of the art technology, on best practices and all other aspects of the Fund;

(e) support pilot projects and studies exploring the possibility of new forms of Community cooperation and Community law in this area;

(f) support the development of statistical tools, methods and common indicators.

3. The annual work programme laying down the priorities for Community actions shall be adopted in accordance with the procedure referred to in Article 50(2).

Article 7

Target Groups

1. For the purposes of this Decision the target groups shall comprise all third country nationals illegally residing in a Member State.

2. This shall include third country nationals who are not or no longer in need for international protection because their application for asylum has been rejected by a final decision under the respective national legal systems or because their status has been revoked, ended or not been renewed (by a final decision) in accordance with national and Community law.

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

CHAPTER II
PRINCIPLES OF ASSISTANCE

Article 8

Complementarity, consistency and compliance

1. The Fund shall provide assistance which complements national, regional and local actions, integrating into them the priorities of the Community.

2. The Commission and the Member States shall ensure that assistance from the Fund and the Member States is consistent with the activities, policies and priorities of the Community. This consistency shall be indicated in particular in the multiannual programme referred to in Article 20.

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

Article 9

Programming

1. The objectives of the Fund shall be pursued in the framework of two multiannual programming periods (2007-2010 and 2011-2013). The multiannual programming

system shall include the priorities and a process of management, decision making, auditing and certification.

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

Article 10

Subsidiary and proportional intervention

1. Implementation of multiannual and annual programmes referred to in Articles 20 and 22 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. The means employed by the Commission and the Member States shall vary according to the size of the Community contribution in relation to audit provisions. Differentiation shall also apply to provisions on evaluation and to the reports on multiannual and annual programmes.

Article 11

Implementation methods

1. The Community budget allocated to the Fund shall be implemented in accordance with Article 53 (1), point (b) of Council Regulation (EC, Euratom) No 1605/2002, with the exception of the Community Actions referred to in Article 6 and the technical assistance referred to in Article 17.

   The Member States and the Commission shall ensure compliance with the principle of sound financial management.

2. The Commission exercises its responsibility for implementing the general budget of the European Communities by:

   (a) checking the existence and proper functioning of management and control systems in the Member States in accordance with the procedures described in Article 32;

   (b) interrupting or suspending all or part of payments in accordance with Articles 41 and 42 if the national management and control systems fail, and by applying any other financial correction required, in accordance with the procedures described in Articles 45 and 46.

Article 12

Additionality

1. Contributions from the Fund shall not replace public or equivalent expenditure by a Member State.

2. The Commission shall, in cooperation with each Member State, verify additionality mid-term by 31 December 2012 and ex-post by 31 December 2015.

Article 13

Partnership

1. Each Member State shall organise, in accordance with current national rules and practices, a partnership with the authorities and bodies which it designates, namely:

   (a) the competent regional, local, urban and other public authorities;

   (b) any other appropriate body representing civil society, non-governmental organisations, including the social partners.

   Each Member State shall ensure broad and effective involvement of all the appropriate bodies, in accordance with national rules and practices.

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

   The partnership shall cover preparation, implementation, monitoring and evaluation of the multiannual programmes.

CHAPTER III
FINANCIAL FRAMEWORK

Article 14

Global resources

1. The financial reference amount for the implementation of the Fund from 1 January 2008 to 31 December 2013 shall be EUR 759 million.

2. The annual appropriations for the Fund shall be authorised by the budgetary authority within the limits of the financial perspectives.

3. The Commission shall make indicative annual breakdowns by Member States in accordance with the criteria established in Article 15.

Article 15

Annual distribution of resources for eligible actions in the Member States

1. Each Member State shall receive a fixed amount of EUR 300.000 from the Fund's annual allocation.

This amount shall be fixed at EUR 500.000 per annum for the period 2007-2013 for the states which acceded to the European Union on 1 May 2004.

This amount shall be fixed at EUR 500.000 per annum for Member States which will accede to the European Union in the period 2007 – 2013 for the remaining part of the period 2007 - 2013 following the year of their accession.

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

(a) 70 % in proportion to the total number of third country nationals illegally residing or having resided illegally in the territory of the Member State and who are subject to a return decision under national and Community law, i.e. an administrative or judicial decision or act, stating or declaring the illegality of stay and imposing an obligation to return, over the previous three years;

(b) 30% in proportion to the number of third country nationals who have actually left the territory of the Member State following an administrative or judicial order to leave, whether undertaken voluntarily or under coercion over the previous three years.

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

(a) third country nationals who are refused entry in a transit zone by a Member State;

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

4. The reference figures are the latest statistics produced by the Statistical Office of the European Communities in accordance with Community law.

5. Where the statistics referred to in paragraph 4 are not available, Member States shall provide the necessary figures.

Article 16

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 Communities.

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 60% for projects addressing specific priorities identified in the Commission multiannual guidelines as defined in Article 18.

This shall be increased to 75% in the Member States covered by the Cohesion Fund.

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

Article 17

Technical assistance at the initiative of the Commission

1. At the initiative of and/or on behalf of the Commission, 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, within the limits of 0,20% of the Fund's annual allocation.

2. Those actions shall include:

(a) studies, evaluations, expert reports and statistics, including those of a general nature concerning the operation of the Fund;

(b) measures aimed at the partners, the beneficiaries of assistance from the Fund and the general public, in particular information measures;

(c) the installation, operation and interconnection of computerised systems for management, monitoring, inspection and evaluation;

(d) improvements in evaluation methods and the exchange of information on practices in this field.

Article 18

Technical assistance of the Member states

1. At the initiative of the Member State in question, 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 annual amount set aside for technical assistance may not exceed 4 % of the total annual amount of co-financing allocated to the Member State, plus EUR 30 000.

CHAPTER IV
PROGRAMMING

Article 19

Adoption of strategic guidelines

1. For each multiannual programme, the Commission shall adopt strategic guidelines setting out a framework for the intervention of the Fund, taking into account the progress in the development and implementation of Community legislation in the area of return and measures taken by the Community in the area of illegal immigration as well as the indicative distribution of the financial resources of the Fund for the period of the multiannual programme;

2. For the objectives of the Fund referred to in Article 3, paragraph 1, point (a) and (b), those guidelines shall in particular give effect to the priorities of the Community to promote

   – the return of third country nationals who are not in the possession of passports or other identity documents;

   – the return of third country nationals not covered under Community readmission agreements or national bilateral readmission agreements, in view of strengthening the obligation under international law to readmit own nationals;

   – the return to a particular country of third country nationals and stateless persons who have come from or have resided in this country not as its own nationals;

   – the return of particularly vulnerable groups;

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

3. The Commission shall adopt the strategic guidelines relating to the first multiannual programming period (2008-2010) on 31 March 2007 at the latest, and those relating to the second multiannual programming period (2011-2013) on 31 March 2010.

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

Article 20

Preparation and approval of national multiannual programmes

1. Each Member State shall for each programming period and on the basis of the strategic guidelines referred to in Article 19 propose a draft multiannual programme which shall include the following elements:

(a) a description of the current situation in the Member State as regards the principle of integrated return management, the cooperation with consular authorities and immigration services of third countries, the measures and policies relating to voluntary return and enforced return, the approach towards reintegration measures and sustainability of return, capacity building of competent administrative and judicial authorities and the cooperation with other Member States related to the above;

(b) analysis of requirements in the Member State in question in terms of the cooperation with consular authorities and immigration services of third countries, the measures and policies relating to voluntary return and enforced return, the approach towards reintegration measures and sustainability of return, capacity building of competent administrative and judicial authorities and the cooperation with other Member States related to the above and an indication of operational objectives designed to meet these requirements during the period covered by the multiannual programme;

(c) 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) indication of whether this strategy is compatible with other regional, national and Community instruments;

(e) information on the priorities and their specific targets. Those targets shall be quantified using a limited number of indicators for implementation, results and impact, taking into account the proportionality principle. The indicators must make it possible to measure the progress in relation to the baseline situation and the effectiveness of the targets implementing the priorities;

(f) a draft financing plan which sets out, for each priority and each year, the Fund's proposed financial contribution and the overall amount of public or private co-financing;

(g) implementing provisions for the multiannual programme, including:

– designation by the Member State of all the entities stipulated in Article 25;

– a description of the implementation, monitoring, control and evaluation systems;

– a definition of the procedures for the mobilisation and circulation of financial flows in order to ensure their transparency;

– the provisions laid down to ensure that the multiannual programme is publicised.

2. The Member States shall establish each multiannual programme in close cooperation with the partners referred to in Article 13.

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

4. The Commission shall appraise the proposed multiannual programme in light of the following :

(a) its consistency with the objectives of the Fund and the strategic guidelines defined in Article 19,

(b) the relevance, appropriateness and expected results of the strategy and operational priority themes proposed by the Member State;

(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 set out in this Decision;

(d) its compliance with Community law, in particular with Community law aiming at ensuring the free movement of persons in conjunction with the directly related flanking measures with respect to external borders controls, asylum and immigration.

5. Where the Commission considers that a multiannual programme is inconsistent with the strategic guidelines or does not comply with the provisions of this decision setting out management and control arrangements, it shall request the Member State to revise the proposed programme accordingly.

6. The Commission shall adopt each multiannual programme within four months following its formal submission, in accordance with the procedure referred to in article 52(2).

Article 21

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, particularly in the light of Council conclusions. Multiannual programmes may be re-examined in the light of evaluations and / or following implementation difficulties.

2. The Commission shall adopt a decision on the revision of the multiannual programme as soon as possible after the formal submission of a request by the Member State concerned.

Article 22

Annual programmes

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

2. The Commission shall provide the Member States, no later than 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 15.

3. The Member States shall submit to the Commission, no later than 1 November of each year, a draft annual programme for the following year, established in accordance with the multiannual programme and including:

   (a) the general rules for selection of projects to be financed under the annual programme;

   (b) a description of the tasks to be carried out by the responsible authority when implementing the annual programme;

   (c) the proposed financial breakdown of the Fund's contribution between the programme's various actions and an indication of the amount requested to cover technical assistance under Article 17 for the purpose of implementing the annual programme.

4. When examining the Member State's proposal, the Commission shall take account of the final amount of the appropriations allocated to the Fund under the budgetary procedure and shall adopt the financing decision from the Fund no later than 1 March of the year in question. The decision shall indicate the amount allocated to the Member State and the period for which the expenditure is eligible.

CHAPTER V
MANAGEMENT AND CONTROL SYSTEMS

Article 23

Implementation

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

Article 24

General Principles in the management and control systems

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

(a) a clear definition of the functions of the bodies and / or departments concerned in management and control and a clear allocation of functions within each body;

(b) a clear separation of functions between bodies concerned in management, certification of expenditure and control and between those functions within each body;

(c) adequate resources for each body, department and / or individual to carry out the functions which have been allocated to it throughout the period of implementation of actions financed by the Fund;

(d) effective internal control arrangements of the responsible authority and any delegated authority;

(e) reliable accounting, monitoring and financial reporting systems in computerised form;

(f) effective systems of reporting and monitoring where the performance of tasks is delegated;

(g) detailed manuals of procedures in relation to the functions to be performed;

(h) effective arrangements for the audit of the functioning of the system;

(i) systems and procedures to ensure a sufficient audit trail;

(j) procedures concerning the reporting and the monitoring of irregularities and the recovery of amounts unduly paid.

Article 25

Designation of authorities

1. For each multiannual programme 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, which shall be responsible for the management of multi-annual and annual programmes supported by the Fund and shall handle all communication with the Commission ;

(b) a certifying authority: national public authority or body operationally independent of any authorising department of the responsible authority,

designated by the Member State to certify declarations of expenditure and applications for payment before they are sent to the Commission;

(c) an audit authority: national public authority or body operationally independent of the responsible authority designated by the Member State and responsible for verifying the sound operation of the management and control system;

(d) where appropriate, a delegated authority;

(e) a compliance assessment body which shall be designated at the time of submission to the Commission of each draft multiannual programme. The Commission may accept the designated audit authority as the compliance assessment body where it has the necessary capacity and operational independence. It must carry out its work according to international audit standards.

2. The Member State shall lay down rules governing its relations with those authorities and bodies and their relations with the Commission.

3. Subject to Article 24, point b), several or all management, certification and control functions may be carried out by the same body. Control and certification functions may be carried out by the same body or department.

4. The rules for implementing Articles 26 to 29 shall be adopted by the Commission in accordance with the procedure referred to in Article 52(2).

Article 26

Responsible authority

1. The responsible authority may be a body of the Member State itself, a national public body as well as a body governed by the private law of the Member State and which has a public-service mission. Where the Member State designates a responsible authority which is not a body of the Member State itself, it shall lay down all the arrangements governing its relations with the said authority and the latter's relations with the Commission.

2. 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.

3. The Member State shall provide the responsible authority with adequate funding so that it can carry out its tasks properly and uninterruptedly throughout the period 2007-2013.

Article 27

Tasks of the responsible authority

1. The responsible authority shall have responsibility for efficient, effective and correct managing and implementation of the multiannual programme.

It shall in particular:

(a) consult relevant partners (non-governmental organisations, local authorities, competent international organisations, social partners etc.) through the partnership established in Article 12;

(b) submit to the Commission proposals for multiannual and annual programmes defined in articles 20 and 22 ;

(c) organise and advertise calls for tenders and calls for proposals;

(d) organise selection and award procedures for Fund co-financing in accordance with the principles of transparency, equal treatment and non-combination of grants;

(e) receive payments made by the Commission, and make payments to the beneficiaries;

(f) ensure consistency and complementarity between co-financing under the Fund and from other relevant national and Community financial instruments;

(g) verify the delivery of the co-financed products and services and that the expenditure declared for actions has actually been incurred and complies with Community and national rules;

(h) ensure that there is a system for recording and storing in computerised form detailed 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;

(i) ensure that beneficiaries and other bodies involved in the implementation of actions cofinanced by the Fund maintain either a separate accounting system or an adequate accounting code for all transactions relating to the operation;

(j) ensure that the evaluations of multiannual programmes referred to in Article 48 are carried out within the time limits laid down in this Decision and meet the quality standards agreed between the Commission and the Member State;

(k) set up procedures to ensure that all documents regarding expenditure and audits required to ensure an adequate audit trail are held in accordance with the requirements referred to in article 43;

(l) ensure that the audit authority receives, for the purposes of carrying out the audits defined in Article 30(1) all necessary information on management procedures operated and the projects co-financed by the Fund;

(m) ensure that the certifying authority receives all necessary information on the procedures and audits carried out in relation to expenditure for the purpose of certification;

(n) draw up and submit to the Commission reports, statements of expenditure certified by the certifying authority and applications for payment;

(o) carry out information and advisory activities; and disseminate results of supported actions;

(p) co-operate with the Commission and the responsible authorities in the other Member States.

5. The responsible authority's management activities for projects implemented in the Member States can be financed under the technical assistance arrangements referred to in Article 18.

Article 28

Delegation of tasks by the responsible authority

1. Where all or some of the responsible authority's tasks are delegated to a delegated authority, the responsible authority shall define 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 26.

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

Article 29

Certifying authority

1. The certifying authority of a multiannual programme shall:

(a) certify that:

i. the statement 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 audits carried out in relation to expenditure included in statements 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) ensure the recovery of any Community financing found to have been unduly paid as a result of irregularities detected, together with interest where appropriate, keeping an account of amounts recoverable and repaying amounts recovered to the Commission, where possible by deducting them from the next statement of expenditure.

2. The certifying authority's activities relating to projects implemented in the Member States can be financed under the technical assistance arrangements referred to in Article 18, provided that the prerogatives of this authority as described in Article 24 are respected.

Article 30

Audit authority

1. The audit authority of a multiannual programme shall:

(a) ensure that audits are carried out in accordance with international audit standards to verify the effective operation of the management and control system of the multiannual programme;

(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), the method to be used, the sampling method for audits on actions supported by the Fund and the indicative planning of audits to ensure that the main beneficiaries of cofinancing by the Fund are audited and that audits are spread evenly throughout the programming period;

2. Where the designated audit authority under this decision is also the designated audit authority under Decisions….., …… and …… [77], or where common systems apply to two or more of these Funds, a single combined audit strategy may be submitted under point c).

3. The audit authority shall draft a final report on the implementation of the annual programmes as defined in Article 50(2), 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 reporting any shortcomings found in the systems for the management and control of the programme.

   (b) an opinion as to whether the management and control system has functioned effectively to give a reasonable assurance on the correctness of the statements of expenditure presented to the Commission and the legality and regularity of the underlying transactions.

   (c) a declaration assessing the validity of the application for payment of the final balance and the legality and regularity of the underlying transactions covered by the final statement of expenditure.

4. Where the audits referred to in paragraph 1 are carried out by a body other than the audit authority, the audit authority shall ensure that such bodies have the necessary operational independence and that the work is performed according to internationally accepted audit standards.

5. The activities of the audit authority or of the body referred to in paragraph 4 relating to projects implemented in the Member States can be financed under the technical assistance arrangements referred to in Article 18, provided that the prerogatives of this authority as described in Article 24 are respected.

CHAPTER VI
CONTROLS

Article 31

Responsibilities of the Member States

1. Member States shall be responsible for ensuring sound financial management of multiannual and annual programmes and the legality and regularity of underlying transactions.

2. They shall ensure that responsible authorities and any delegated authority, certifying authorities, audit authorities and any other bodies concerned receive adequate guidance on setting up the management and control systems referred to in Articles 24 to 30 to ensure that Community financing is used efficiently and correctly.

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[77] Insert references to decisions establishing the ERF, the External borders fund and the integration fund.

3. The Member States shall prevent, detect and correct irregularities. They shall notify these to the Commission, and keep the Commission informed of the progress in the administrative and legal proceedings.

When amounts unduly paid to a beneficiary cannot be recovered, the Member State is responsible for reimbursing the amounts lost to the budget of the European Communities.

4. Member States shall be primarily responsible for the financial control of actions and shall ensure that management 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. Member States shall cooperate with the Commission for the collection of the statistics needed for the implementation of Article 15.

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

Article 32

Management and control systems

1. Prior to the adoption of a multiannual programme, the Member States shall ensure that management and control systemshave been set up in accordance with Articles 24 to 30. They shall be responsible for ensuring that the systems function effectively throughout the programming period.

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

3. Within three months of the submission to the Commission of each draft multiannual programme, the Member States shall submit a report by the compliance assessment body setting out the results of an assessment of the systems and giving an opinion on their compliance with Articles 24 to 30. In the event that the opinion contains reservations, the report shall indicate the shortcomings and their seriousness. The Member States shall draw up, in agreement with the Commission, a plan setting out the corrective measures to be taken and the timetable for their implementation.

4. The detailed rules for implementing paragraphs 1 to 3 shall be adopted in accordance with the procedure referred to in Article 52(2).

Article 33

Responsibilities of the Commission

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

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

3. The Commission may require Member States 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 audits.

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.

Article 34

Cooperation with the control bodies of the Member States

1. The Commission shall cooperate with the audit authorities of multiannual programmes to coordinate their respective control plans and audit methods and shall immediately exchange the results of audits carried out on management and control systems in order to make the best possible use of control resources and to avoid unjustified duplication of work.

   The Commission shall provide its comments on the audit strategy presented under Article 30 not later than three months or at the first meeting following its reception.

2. In determining its own audit strategy, the Commission shall identify those multiannual programmes

   (a) which comply with the system established under Article 32 without reservations or for which reservations have been withdrawn following corrective measures; and

   (b) for which the audit strategy of the audit authority under Article 30 is satisfactory and where reasonable assurance has been obtained that the management and control systems function effectively on the basis of the results of audits by the Commission and the Member State.

For those programmes, the Commission may inform the Member States concerned that it will rely principally on the opinion of the audit authority as to the correctness, legality and regularity of expenditure declared and will carry out its own on-the-spot audits only in exceptional circumstances.

CHAPTER VII
FINANCIAL MANAGEMENT

Article 35

Eligibility – declarations of expenditure

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

2. Expenditure shall correspond to the payments effected by the 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 Commission decision on co-financing indicated in Article 22(4). The co-financed actions must not have been completed before the starting date for eligibility.

4. The following expenditure shall not be eligible for a contribution from the Fund :

   – VAT;

   – interest on debt;

   – the purchase of land for an amount exceeding 10% of the total eligible expenditure for the operation concerned;

   – housing.

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

Article 36

Wholeness of payment to beneficiaries

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

Article 37

Use of the euro

All amounts mentioned in the financing decisions by the Commission, in the commitments and payments made by the Commission as well as the amounts of certified expenditure and requests for payment from the Member States shall be expressed and carried out in euro.

Article 38

Commitments

Community budgetary commitments shall be made annually on the basis of the Commission financing decision referred to in Article 22(4).

Article 39

Payments - Prefinancing

1. Payments by the Commission of the contribution from the Funds 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 pre-financing payment representing 50% of the amount allocated in the Commission's financing decision shall be made to the Member State within sixty days following the adoption of the financing decision.

4. A second pre-financing payment shall be made no more than three months after the Commission has approved a progress report on implementation of the annual programme and a certified declaration of expenditure drawn up in accordance with Articles 29, point a) and 35, accounting for at least 70% 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 co-financing decision or, in any event, 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. Interests generated by pre-financing payments shall be assigned to the programme concerned and must be deducted from the amount of public expenditure declared in the final statement of expenditure..

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

Article 40

Balance payments

1 The Commission shall pay the balance provided it has received the following documents within nine months from the end date of eligibility of costs defined in the annual decision on co-financing by the Fund:

(a) a certified declaration of expenditure and a request for payment of the balance or declaration of reimbursement duly drawn up in accordance with Articles 29, point a) and 35;

(b) the final implementation report for the annual programme, including the information set out in Article 51;

(c) the audit report, opinion and declaration provided for in Article 30(2).

The payment of the balance is subject to the acceptance of the final implementation report and of the statement of validity for the request for payment of the balance.

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

3. The automatic cancellation procedure defined in paragraph 2 shall be suspended, for the amount of the projects concerned, where legal proceedings or administrative appeal having suspensory effects are ongoing at Member State level at the time of submission of the documents defined in paragraph 1. The Member State shall, in the partial final report submitted, give detailed information on such projects, and send reports on progress made with regard to these projects every 6 months. Within 3 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 be interrupted if the Commission has adopted a decision suspending payments of the co-financing for the relevant annual programme in accordance with the provisions of Article 42. The period shall start to run again from the date when the Commission decision referred to in Article 40(3) has been notified to the Member State.

5. Without prejudice to the provisions of Article 41 the Commission shall, within six months of receiving the documents referred to in paragraph 1, 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 the Member States.

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

Article 41

Interruption

1. The payment deadline shall be interrupted by the authorising officer by delegation within the meaning of Regulation (EC, Euratom) No 1605/2002 for a maximum period of six months if there are doubts as to the proper functioning of the management and control systems or if the authorising officer requires additional information from the national authorities in the process of monitoring the observations made under the annual review, or if s/he suspects that serious irregularities, detected or presumed, are present in the expenditure declared.

The Commission shall inform the Member State concerned and the responsible authority immediately of the reasons for the interruption. The Member State shall take the necessary steps to correct the situation as soon as possible.

2. The maximum period of six months shall be extended for another maximum period of six months if it proves necessary to adopt a decision in accordance with Articles 42 and 45.

Article 42

Suspension

1. All or part of the pre-financing and balance payments 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 statement of expenditure is linked to a serious irregularity which has not been corrected; or

   (c) a Member State has not complied with its obligations under Articles 31 and 32**.**

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

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

4. If the required measures are not taken by the Member State, the Commission may adopt a decision to reduce the net amount or cancel the Community contribution to the annual programme in accordance with Article 46.

Article 43

Conservation of documents

The responsible authority shall ensure that all the supporting documents regarding expenditure and audits on the annual programme concerned are kept available for the Commission and the Court of Auditors.

The documents shall be kept available at least for a period three years following the closure of an annual programme, without prejudice to the rules governing State aid. This period shall be interrupted either in the case of legal proceedings or at the request of the Commission stating the reasons.

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

CHAPTER VIII
FINANCIAL CORRECTIONS

Article 44

Financial corrections established by the Member States

1. Without prejudice to the Commission's responsibilities for implementing the general budget of the European Communities, the Member States shall be primarily responsible for investigating irregularities. They shall act upon evidence of any major change affecting the nature or the conditions for the implementation or control of assistance and make the required financial corrections.

2. The Member State shall make the financial corrections required in connection with the individual or systemic irregularities detected in actions or annual programmes. The corrections made by the Member States shall consist in recovering all or part of the Community contribution. The Member State shall take into account the nature and gravity of the irregularities and the financial loss to the Fund.

   Member States shall include in the annual report sent to the Commission under Article 50(2) a list of cancellation proceedings initiated for the annual programme concerned.

   The corrections made by the Member State shall consist in cancelling all or part of the Community contribution, and, 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 by Article 47(2).

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

Article 45

Audit of accounts and financial corrections by the Commission

1. Without prejudice to the powers of the Court of Auditors or the checks carried out by the Member States in accordance with national laws, regulations and administrative provisions, Commission officials or authorised Commission representativesmay carry out on-the-spot checks, including sample checks, on the operations financed by the Fund and on management and control systems with a minimum of one working day’s 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 correctness 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 Articles 31, it shall suspend the pre-financing or final payment in accordance with Article 42.

Article 46

Criteria for the corrections

1. If the Member State has not made the corrections within the period as provided for in Article 42(2) and if no agreement has been reached, the Commission may, , decide within three months to cancel all or part of the Community contribution to an annual programme when 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 statement of expenditure is irregular and has not been corrected by the Member State prior to the opening of the correction procedure under this paragraph; and

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

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

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

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

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

Article 47

Repayment

1. Any repayment due to be made to the Commission shall be effected before the due date indicated in the order for recovery drawn up in accordance with Article 72 of the Council Regulation (EC,Euratom) N° 1605/2002[78]. 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 Communities, in force on the first calendar day of the month in which the due date falls, increased by three and a half percentage points.

Article 48

Obligations of Member States

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

CHAPTER IX
MONITORING, EVALUATION AND REPORTS

Article 49

Monitoring and evaluation

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

2. The Fund shall be evaluated regularly by the Commission in partnership with the Member States to assess the relevance, effectiveness and impact of actions in the light of the objectives referred to in Article 2.

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

[78] OJ L 351, 28.12.2002.

Article 50

Reports

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.

2. No later than nine months after the eligibility deadline for expenditure laid down in the co-financing decision for each annual programme, the responsible authority shall submit a final implementation report and a final declaration of expenditure to the Commission as provided by Article 35.

3. The Member States shall submit to the Commission no later than 30 June 2012 (for the period 2008-2010) and 30 June 2015 (for the period 2011-2013) respectively, an evaluation report on the results and impact of actions co-financed by the Fund.

4. The Commission shall submit to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions:

   (a) no later than 30 June 2010, a report on the application of the criteria set out in Article 15 for the annual breakdown of resources between member States; together with proposals for amendments if deemed necessary ;

   (b) no later than 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) no later than 31 December 2012 (for the period 2008-2010) and 31December 2015 (for the period 2011-2013) respectively, an ex post evaluation report.

Article 51

Final annual report

1. The reports referred to in Article 50(2) shall include the following information in order to obtain a clear view of the implementation of the annual and multiannual programmes:

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

   (b) the progress made in implementing the multiannual programme and its priorities in relation to their specific, verifiable targets, with a quantification,

wherever and whenever they lend themselves to quantification, of the physical indicators and the indicators of implementation, results and impacts for each priority;

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

- monitoring and evaluation measures, including data collection arrangements;
- a summary of any significant problems encountered in implementing the operational programme and any measures taken;
- the use made of technical assistance;
- the measures taken to provide information on and to make public the annual and multiannual programmes.

2. The reports shall be judged acceptable where they contain all the information listed in paragraph 1. The Commission shall reach a decision on the content of the annual report on implementation submitted by the Responsible Authority within two months. If the Commission does not respond within the time limit laid down, the report shall be deemed to be accepted.

CHAPTER IX
GENERAL AND FINAL PROVISIONS

Article 52

Committee

1. The Commission shall be assisted by the common Committee "Solidarity and Management of Migration Flows", established by the Decision establishing the External Borders Fund for the period 2007-2013 as part of the General programme 'Solidarity and Management of Migration Flows' ../… [79] ("the "committee").

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

3. The Committee shall adopt its Rules of Procedure.

[79] Insert references to decisions establishing the ERF, the External borders fund and the integration fund.

Article 53

Review

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

Article 54

Entry into force

This Decision shall apply from 1 January 2008.

Article 55

Addressees

This Decision is addressed to the Member States.

Done at Brussels,

For the European Parliament	*For the Council*
The President	*The President*

FINANCIAL STATEMENT

LEGISLATIVE FINANCIAL STATEMENT

1. NAME OF THE PROPOSAL:

Programme "Solidarity and Management of Migration Flows "

Proposal for a Council Decision establishing the "European Refugee Fund" for the period 2008-2013

Proposal for a Council Decision establishing the "European Fund for the Integration of Third-Country nationals" for the period 2007-2013

Proposal for a Decision of the European Parliament and the Council establishing the "European Return Fund" for the period 2008-2013

Proposal for a Decision of the European Parliament and the Council establishing the "External Borders Fund" for the period 2007-2013

2. ABM / ABB FRAMEWORK

1802 – External Frontiers, visa policy and free movement of people

1803 – Common Immigration and Asylum Policies

3. BUDGET LINES

3.1. Budget lines (operational lines and related technical and administrative assistance lines (ex- B.A lines)) including headings :

Financial Perspectives 2007 - 2013: Heading 3.

3.2. Duration of the action and of the financial impact:

2007-2013

3.3. Budgetary characteristics (*add rows if necessary*) :

Budget line	Type of expenditure		New	EFTA contribution	Contributions from applicant countries	Heading in financial perspective
European Refugee Fund	**Non-**	**Diff**	**NO**	**NO**	**No**	No **3**

	comp					
Integration of Third-country nationals	**Non-comp**	**Diff**	**Yes**	**NO**	**No**	No **3**
European Return Fund	**Non-comp**	**Diff**	**Yes**	**NO**	**No**	No **3**
External Borders Fund	**Non-comp**	**Diff**	**Yes**	**NO**	**No**	No **3**

4. SUMMARY OF RESOURCES

4.1. Financial Resources (Current Prices)

4.1.1. Summary of commitment appropriations (CA) and payment appropriations (PA)

EUR million (to 3 decimal places)

Expenditure type	Section no.		2007	2008	2009	2010	2011	2012	2013	2014 -…	Total
Operational expenditure (8.1)											
Commitment Appropriations (CA)	European Refugee Fund	a	60,000	140,000	140,000	150,000	200,000	204,200	208,600		1.102,800
	Emergency measures	a	9,800	9,800	9,800	9,800	9,800	9,800	9,800		68,600
	Integration of Third-country Nationals	a	95,000	126,000	205,000	265,000	305,000	360,000	400,000		1.756,000
	European Return Fund	a	0,000	39,000	60,000	100,000	150,000	200,000	200,000		749,000

	External Borders Fund	a	170,000	170,000	220,000	285,000	320,000	400,000	570,000		2.135,000
Payment Appropriations (PA)	European Refugee Fund	b	54,771	105,000	150,000	145,000	175,000	202,100	206,400	64,529	1.102,800
	Emergency measures	b	9,800	9,800	9,800	9,800	9,800	9,800	9,800		68,600
	Integration of Third-country Nationals	b	47,500	110,500	165,500	235,000	285,000	332,500	380,000	200,000	1.756,000
	European Return Fund	b	0,000	19,500	49,500	80,000	125,000	175,000	200,000	100,000	749,000
	External Borders Fund	b	85,000	170,000	195,000	252,500	302,500	360,000	485,000	285,000	2.135,000
Administrative expenditure within reference amount (8.2.4)											
Technical & administrative assistance (NDA)	European Refugee Fund	c	1,300	1,600	1,500	1,600	1,850	1,550	1,800		11,200
Technical & administrative assistance (NDA)	Emergency measures	c	0,200	0,200	0,200	0,200	0,200	0,200	0,200		1,400
Technical & administrative assistance (NDA)	Integration of Third-country Nationals	c	1,100	1,750	1,700	2,150	2,550	2,850	2,900		15,000

Technical & administrative assistance (NDA)	European Return Fund	c	0,000	1,400	1,500	1,600	1,700	1,750	2,050		10,000
Technical & administrative assistance (NDA)	External Borders Fund	c	1,600	2,250	2,300	2,650	2,900	2,650	2,650		17,000
TOTAL REFERENCE AMOUNT											
Commitment Appropriations		**a+c**	**339,000**	**492,000**	**642,000**	**818,000**	**994,000**	**1.183,000**	**1.398,000**		**5.866,000**
Payment Appropriations		**b+c**	**201,271**	**422,000**	**577,000**	**730,500**	**906,500**	**1.088,400**	**1.290,800**	**649,529**	**5.866,000**
Administrative expenditure not included within reference amount											
Human resources and associated expenditure (NDA)	8.2.5	d	7,587	8,856	10,044	11,232	12,420	13,392	13,608		77,139
Administrative costs, other than human resources and associated costs, not included in reference amount (NDA)	8.2.6	e	0,676	0,732	0,746	0,761	0,777	0,792	0,808		5,292
Total indicative financial cost of intervention											
TOTAL CA including cost of Human Resources		a+c+d+e	347,263	501,588	652,790	829,993	1.007,197	1.197,184	1.412,416		5.948,431
TOTAL PA including cost of Human Resources		b+c+d+e	209,534	431,588	587,790	742,493	919,697	1.102,584	1.305,216	649,529	5.948,431

Co-financing details

If the proposal involves co-financing by Member States, or other bodies (please specify which), an estimate of the level of this co-financing should be indicated in the table below (additional lines may be added if different bodies are foreseen for the provision of the co-financing):

EUR million (to 3 decimal places)

Co-financing body		Year n	n + 1	n + 2	n + 3	n + 4	n + 5 and later	Total
……	f							
TOTAL CA including co-financing	a+c +d+ e+f							

4.1.2. Compatibility with Financial Programming

X Proposal is compatible with next financial programming 2007-2013

☐ Proposal will entail reprogramming of the relevant heading in the financial perspective.

☐ Proposal may require application of the provisions of the Interinstitutional Agreement[80] (i.e. flexibility instrument or revision of the financial perspective).

4.1.3. Financial impact on Revenue

☐ Proposal has no financial implications on revenue

x Proposal has financial impact – the effect on revenue is as follows:

NB: All details and observations relating to the method of calculating the effect on revenue should be shown in a separate annex.

[80] See points 19 and 24 of the Interinstitutional agreement.

EUR million (to one decimal place)

Budget line	Revenue	Prior to action [Year n-1]	Situation following action						
			2007	2008	2009	2010	2011	2012	2013
	a) Revenue in absolute terms		3.7	3.7	4.8	6.2	7	8.8	12.5
	b) Change in revenue	*Δ*							

(Please specify each revenue budget line involved, adding the appropriate number of rows to the table if there is an effect on more than one budget line.)

The Proposal for a Decision of the European Parliament and the Council establishing the "*External Borders Fund*" constitutes a development of the Schengen acquis within the meaning of the Agreement concluded by the Council of the European Union and the Republic of Iceland and the Kingdom of Norway concerning the association of those two States with the implementation, application and development of the Schengen acquis.

This Decision also constitutes a development of the provisions of the Schengen *acquis* within the meaning of the Agreement signed by the European Union, the European Community and the Swiss Confederation on the latter's association with the implementation, application and development of the Schengen *acquis*.

Contribution : 2,19 % (2004 figures).

4.2. Human Resources FTE (including officials, temporary and external staff) – see detail under point 8.2.1.

Annual requirements	2007	2008	2009	2010	2011	2012	2013
Total number of human resources	70,25	82	93	104	115	124	126

5. CHARACTERISTICS AND OBJECTIVES

5.1. Need to be met in the short or long term

5.1.1. European Refugee Fund :

The existing financial instrument supporting the implementation of the common asylum policy is the European Refugee Fund. Its objective is set by the Treaty establishing the European Community (Article 63.2.b): to promote a balance of efforts between Member States in receiving and bearing the consequences of receiving refugees and displaced persons.

More specifically, the aim of the ERF is to express solidarity at Community level and to alleviate the pressures felt by Member States most affected by reception of refugees and displaced persons in facing the consequences of this reception, which includes reception conditions during asylum procedure (and ensuring fair and efficient asylum procedure), integration of recognised refugees and promoting voluntary return solutions for rejected asylum seekers and refugees who wish to return to their country of origin. Furthermore, the European Refugee Fund is one of the instruments of a Common Asylum policy, and as such the measures supported by the Fund should seek to complement and support EU legislation in order to support the progressive implementation of a Common Asylum System at all levels (common legislation and development of common best practices).

The ERF is an important part of an overall policy for building a common European asylum policy. Reducing divergence between asylum systems and progressive implementation of common standards at EU level will have a cost, which will be greater for Member States with larger number of asylum seekers and refugees, but also to new Member States. The Community should contribute to correcting those imbalances and to supporting Member States in complying with their obligations[81]. Finally, account must also be taken of the other objectives being formulated in related policies, such as the integration of third country nationals and management of illegal immigration.

5.1.2. Integration of Third-country nationals :

The common basic principles adopted by Governments at the JLS Council on 19 November 2004 underline the need for a holistic approach to integration of migrants. It is stated that not only within Member States but also at the European level, steps are needed to ensure that the focus on integration is a mainstream consideration in policy formulation and implementation, while at the same time specific policies for integrating third-country nationals are being developed.

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[81] In drawing the impact assessment, and formulating the policy options available, account has been taken of previously established objectives underlying the European Refugee Fund and their likely achievement. Account also has to be taken of completion of other objectives (legislation) and the level of complementarity already achieved or soon to be achieved with these.

In accordance with the common basic principles, the specific policies for integrating legally residing immigrants in Member States, envisage to:

- Provide opportunity for immigrants and create incentives to integrate and overcome language difficulties and/or problems relating to understanding the norms, values and traditions of the host society or satisfying job requirements;

- Be pro-active in the design and implementation of national introduction programmes and activities, the capacity building of migrant organisations and of their interlocutors at all level of government;

- Recognise new challenges in migratory pressure and address them through a successful integration strategy, either because the Member States concerned have only been welcoming immigrants over the last few years, such as the Member States in the south of the EU, or because they are at the eve of a period of more immigration, as is the case in some of the new Member States;

- Overcome shortcomings in infrastructure at local, regional and national levels to deal with migratory inflows, and promote coherence between policy design and its implementation on the ground;

- Combat intolerance and prejudice among the host population, and to raise awareness of the importance of diversity in society, including among public and private sector service providers;

- Promote dialogue and consultation between political decision makers and local communities on the challenges faced by migrants, about their needs and circumstances and about ways of improving their position.

To achieve such policies, in particular to promote the integration of third country nationals having recently arrived and been admitted by a Member State to reside in its territory, the following specific objectives should be pursued, turning into concrete action the common basic principles:

(1) Facilitate the organization and implementation of admission programmes for economic migrants, strengthening their integration component and anticipating the needs of third-country nationals.

(2) Contribute to the organisation and implementation of introduction programmes and activities for third country nationals, by way of capacity building, policy development and implementation.

(3) Increase civic, cultural and political participation of third country nationals in the host society, in order to promote their active citizenship and recognition of fundamental values.

(4) Strengthen the capacity of Member States' public and private service providers to interact with third country nationals and their organizations and to answer better the needs of different groups of third country nationals

(5) Strengthen the ability of the host society to adjust to increasing diversity by targeting integration actions at the host population.

(6) Strengthen the capacity of Member States to monitor and evaluate integration policies.

5.1.3. European Return Fund

The policy objective in this area is to support and encourage Member State efforts to improve the management of the return of illegal third country nationals in all aspects, taking account of Community legislation in this area.

In particular, the following specific objectives should be pursued:

1. to promote the introduction of integrated return management procedures by all Member States and to improve the operation and organisation of existing procedures;

2. to strengthen co-operation between Member States in the conception and implementation of integrated return management procedures and practices;

3. to ensure the effective and uniform application of common standards on return.

These aims will be pursued through actions such as:

- the development of effective and lasting operational co-operation between Member State authorities and consular and immigration services in third countries, with a view to facilitating the receipt of travel documents for the return of third country nationals and ensuring speedy and successful removal procedures;

- developing co-operation between Member States in the collection and dissemination of information on their country of origin to potential returnees;

- increasing the number of illegal migrants opting to return voluntarily by encouraging this through better targeted and more attractive assisted voluntary return programmes and other means;

- simplifying enforced return procedures and improving the capacity of courts to deal with cases, with a view to reducing the period of detention of those awaiting forced removal without infringing their basic rights;

- formulating joint integrated return plans, including implementing joint voluntary return programmes in respect of particular countries or regions and arranging joint flights, thus reinforcing the message of an effective management of migration flows by the EU;

- implement joint return operations, thus making better use of existing national resources and expertise for the common good of the fight against illegal immigration throughout the EU

- encouraging exchange of information, support, advice and best practice between Member States in dealing with the return of people to specific countries and/or of particularly vulnerable groups;

- establishing joint arrangements for the reception of those returning in countries of origin, former residence or transit in co-operation with the countries concerned;

- developing measures to ensure the effective reintegration of people in their country of origin or former residence after they return;

- improving the capacity of competent authorities to enforce removal decisions with full respect for the rights of the people concerned and for their dignity in accordance with relevant EU standards;

- ensuring the provision of specific assistance to vulnerable groups such as children, the elderly, people with disabilities, pregnant women and those who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence.

5.1.4. External Borders Fund

Given the uneven division of responsibility between Member States for controlling the external borders of the EU, the policy objectives to achieve are:

1. to improve the efficiency of controls and thereby the effectiveness of the management and protection of external borders in order to reduce illegal entry and increase the security of the internal EU area of free movement;

2. to make it easier and faster for authorised travellers to enter the EU in conformity with the Schengen acquis while protecting the EU against illegal entry;

3. to achieve a uniform application of the EU law by Member States and an overall efficiency of national border guards in carrying out their tasks in accordance with EU law;

4. to enhance the efficiency of the issuing of visas and the implementation of other pre-frontier checks.

These general aims can be translated into a series of specific and operational objectives of which the key ones, in terms of added value and cost-effectiveness for the European Union, would be the following:

- improving efficiency of control and surveillance measures through the use of state of the art technological means;
- establishing the necessary infrastructures to improve efficient flow management at border crossing points;
- enhancing the capacity of the human resources allocated to border management, for instance by implementing the common core curriculum to be set up by the Agency;
- improving the coordination and information exchange at national level for all relevant authorities involved in securing effective border control;
- reducing as much as possible illegal entries at external borders through operations in third countries, in cooperation with these countries;
- enhancing the coordination and cooperation between Member States as regards the implementation of the common visa policy.

5.2. Value-added of Community involvement and coherence of the proposal with other financial instruments and possible synergy

5.2.1. European Refugee Fund

The discussion on the policy options available to achieve solidarity in the field of asylum policy was inevitably influenced by the existing financial instrument, the European Refugee Fund. At the time of its renewal last year, different options have been considered The above assessment on the different model is valid to date. The current proposal will therefore merely extend the programming period of the ERF II until the end of the new financial perspectives, i.e. to change its end date from end 2010 to the end of 2013.

Moreover, to take into account the establishment of the Return Fund, the need for an adjustment of the strand on return in the European Refugee Fund was considered necessary.

Currently, the European Refugee Fund supports actions for the voluntary return of persons who have applied for international protection or who are enjoying international protection in the Member States. In practice, in terms of returns, this covers a wide spectrum of situations, from those who, having been granted refugee status, decide to return to their countries of origin to those who decide to return because they have had applications refused and have few prospects in the Member State and who, in the absence of alternatives, decide to avail themselves of the arrangements made to facilitate voluntary return.

The following options were examined:

1. To leave the ERF as it is and limit the Return Fund to illegal immigrants;

2. To exclude all return measures relating to asylum seekers, refugees and other beneficiaries of protection from the ERF and to transfer support for such measures to the Return Fund;

3. To only transfer the support for measures relating to rejected asylum seekers to the Return Fund and maintain the support by the ERF for the voluntary return of asylum seekers and persons benefiting from international protection

The third option was the chosen option

5.2.2. Integration of Third-country nationals

Following the adoption of the legislative framework establishing a common immigration policy and in view of the solidarity provision in the new Constitutional Treaty, setting-up a financial instrument would provide support and incentives for the Member States to develop integration policies for integration of third-country nationals admitted in accordance with the legislative framework laid down in both national and Community law.

Here, different models for financial support were considered:

1. Integration of third-country nationals is funded via joint projects and Community actions (e.g. the ARGO framework model or the INTI programme):

2. Integration of third-country nationals is solely funded within a mainstreaming instrument, such as the European Social Fund (ESF)

3. Integration of third-country nationals is funded within a separate instrument expressing solidarity between Member States on the basis of the number of third country nationals legally present in the Member States.

The ex ante evaluation demonstrated the need to opt for a separate instrument on integration for third country nationals in complementarity with the ESF mainstreaming approach. To respond to the specific challenges in the area of integration of third-country nationals, the instrument would intervene in six specific areas:

- Improving the implementation of admission programmes. Facilitating a rapid and smooth integration of those migrants who have been explicitly invited to contribute to Member States' societies. In many Member States it is recognised that these persons in particular provide a valuable contribution to economic growth. Their arrival is commonly seen as important to counteract the prospective decline in the EU's work force in future years. Action should be taken to prepare their integration even before they arrive in the territory of the Member States.

- The implementation of introduction programmes and introductory activities. The early stages of a third country national's residence in the Member State are of particular importance. Introduction programmes and activities express the investment host societies are willing to make in the future, by: providing opportunity for migrants to learn the language of the host country to learn about ways of doing things, so increasing their chances of being self-sufficient as soon as possible finding employment; increasing the incentive and motivation for migrants to integrate; making it easier for young migrants, in particular, to integrate and so prevent identity problems and reduce delinquency: facilitating the development of targeted and flexible integration policies and activities, taking account of the special needs of third-country nationals and encouraging the development of new and innovative approaches to integration.

- Promoting active citizenship through civic, cultural, religious and political participation. These activities can contribute by increasing the knowledge of migrants of the history, traditions, norms, values and local customs of the host society, facilitating the dialogue between different religious communities; encouraging migrants to take responsibility and an active part in local community life, increasing their understanding of political processes and encouraging them to participate in decision making processes and increasing their possibilities of applying for citizenship. In short, active citizenship can highlight skills and open up avenues to third country nationals to realise their full potential in host societies.

- Supporting capacity building in public and private sector service providers in Member States. Much interaction between third country nationals and other citizens takes place in such mainstream organisations as schools, hospitals, communal housing societies etc. Opening up these providers through diversity management will reinforce the motivation and willingness of third country nationals to participate in society. This can be achieved by: making service providers more aware of diversity issues and helping them to develop inter-cultural communication skills; increasing co-operation between local, regional and national authorities responsible for integration and helping to bring about better coordination between the design of policy and its operation on the ground; raising awareness of the benefits of putting in place an effective policy for managing diversity; increasing co-operation between local, regional and national authorities responsible for integration and helping to bring about better coordination between the design of policy and its operation on the ground; raising awareness of the benefits of putting in place an effective policy for managing diversity.

- Helping society to adjust to diversity by making the host population more aware of the true facts about migration and about the people concerned, increasing tolerance towards other cultures and religions and so helping to strengthen social cohesion, increasing dialogue and interaction between migrants and the host population and actively involving private bodies (including SME) in the integration process.

- Policy development, monitoring and evaluation of policies and strategies by: stimulating the collection of relevant data on migration in the Member States so

providing the basis for informed discussion and decision-making; ensuring that the effectiveness of integration efforts are assessed on an ongoing basis and that programmes are responsive to immigrants needs; enabling policy-makers across the EU to learn from past experience not only of policies pursued in their own countries but also of those pursued elsewhere, so helping to improve the policies implemented in the future across Member States.

The Integration Fund will build on past experience, namely the pilot projects on integration of third country nationals (INTI) started in 2002 with a budget of € 4 million. Nearly 300 applications were received in the first two years, applying for more than € 85 million whereas the total budget available was only €10 million.

The pilot projects complement the policy outlined in the Communication on Immigration, integration and employment adopted in June 2003 in which the Commission presented its views on how to elaborate comprehensive and multi-dimensional policies on the integration of legally residing third-country nationals. According to the Communication integration policy should be based on two fundamental underlying principles: First of all that the principle of subsidiarity prevails clearly demonstrating that the primary responsibility for the elaboration and implementation of integration policies lies with the Member States, and secondly, the holistic approach which will ensure integration of immigrants into all aspects of society and which requires that a two-way approach - implying that the responsibility for integration lies both with the receiving society as well as with the arriving immigrant - is applied. The pilot projects supports networks and the transferral of information and good practices between Member States, regional and local authorities and other stakeholders in order to facilitate open dialogue and identify priorities for national integration policies and the actions also support new innovative projects which promote integration of third-country nationals.

To continue the encouragement of a more structured policy development in the field of integration as initiated by INTI, the financial instrument should be complemented by actions facilitating co-operation between Member States and exchange of best practices (Community actions).

The Integration Fund will work in complementarity with the ESF and the ERF.

5.2.3. European Return Fund

A distinct fund established with the particular objective of supporting an integrated return management policy seems best equipped to achieve the objectives set out above. By creating a separate instrument which is targeted at return, the specific problems identified with respect to persuading or coercing illegal migrants to leave the country in which they are residing can be addressed.

The Return Fund will need to work in complementarity with the other financial instruments mentioned in the extended impact assessment – the ERF, AENEAS– each of which addresses specific aspects of the return to their country of origin or former residence.

The European Return Fund will seek to promote the development of integrated set of return measures aiming at putting in place in Member States an effective programme. This should cover all phases of the return process, from the pre-departure phase and the return as such to the reception and reintegration in the country of return and should be tailored to take account of the specific situation in different countries. At the basis of such a programme should be an analysis of the situation in the Member State(s) with respect to the targeted population, a realistic assessment of the potential for return and the cooperation with the countries of return, a planning and evaluation mechanism with respect to the return process of the targeted population and cooperation throughout the process with relevant stakeholders at national, European and international level, such as UNHCR and IOM.

Priority should be given to cooperation between Member States to secure such an approach, given the cost-effectiveness and the synergies involved.

Accordingly, the measures to be supported, when they form part of such an integrated return approach, would include:

- *In all cases*: the procurement of indispensable travel documents, costs of necessary pre-return medical checks, costs of travel and food for returnees and escorts, including medical staff, accommodation for escorts, specific assistance to vulnerable groups such as children or invalids, costs of transportation to the final destination in the country of return and co-operation with the authorities of the country of origin, former residence or transit.

- *Additionally in the case of forced return* the costs of temporary accommodation for returnees and their escorts prior to departure in case of joint return operations.

- *Additionally in the case of voluntary return:* comprehensive pre-return information, assistance and counselling as well as essential expenses before return and initial expenses after return, transport of the returnee's personal belongings, adequate temporary accommodation for the first days after arrival in the country of return in a reception centre or a hotel if necessary, training and employment assistance and limited start-up support for economic activities where appropriate.

- As regards the application of the common standards: education and training of staff in the competent administrative, law enforcement and judicial bodies as well as secondments of these categories of staff from other Member States;

- As regards the cooperation between Member States: actions relating to the cooperation with consular authorities and immigration services of third countries, to facilitate the assistance in obtaining travel documents; actions relating to the joint design and implementation of action plans realising an integrated return management, joint evaluation and monitoring of the process etc.

5.2.4. External Borders Fund

The most relevant policy option is the establishment of a financial solidarity mechanism at Community level to support Member States who bear a lasting and heavy financial burden by being responsible for controlling external borders for the benefit of the Union as a whole. This Fund should be designed to be a concrete expression of EU solidarity by providing financial assistance to those Member States which apply the Schengen provisions on external borders, in addition to those on internal borders (the dismantling of controls on entry). It would accordingly represent an explicit recognition of the tasks they perform in carrying out checks on people entering the EU from third countries and border surveillance not only in their own interests but on behalf of all Member States which have dismantled internal border controls.

Support from the Fund should be extended from the outset to new Member States, as their external borders are operational since their accession even if they have undertaken to remove border controls at a later stage when they are judged ready to do so. It should also extend to the need for Member States to implement Community legislation in relation to specific situations which have arisen as a result of enlargement (the most notable example is of Russians who need to cross Lithuania to reach Kaliningrad). The Fund should, in addition, provide support for managing visas and other similar activities undertaken before people reach the border, whether these are carried out in cooperation with other Member States or not. The efficient management of such activities by the consular services of Member States in third countries is an integral part of a common integrated border management system, which is aimed at facilitating legitimate travel into the EU while preventing illegal entry.

Objective criteria need to be established to allocate funds to Member States. These criteria should take account of the various elements which add to the burden of control on the Member States, in particular, the length of external land and maritime borders, the number of authorised border crossing points, the number of travellers crossing and the extent of pressure caused by people refused entry. The criteria should also take account of the challenges posed by the risk of illegal entry affecting each border, taking into account the geopolitical situation, typology and geography. The assessments made by the Common Centre in Finland and in the future by the European Agency for the management of operational cooperation at external borders will be very helpful in this regard.

From a subsidiarity point of view, such a Fund would support Member States in carrying out the various tasks involved in external border control while not interfering with their responsibilities in respect of determining who they allow to enter their territory.

Actions to be funded could include border crossing infrastructures and related buildings (e.g. border stations, helicopter landing places or lanes, etc.); operating equipment (laboratory equipment, document examination instruments, detection tools, mobile or fixed terminals for consulting SIS and national systems, etc.); means of transport for the surveillance of external borders; equipment for real time exchange of information

between relevant authorities; ICT systems; exchange programmes and training of border guards, immigration officers and consular officers; etc.

5.3. Objectives, expected results and related indicators of the proposal in the context of the ABM framework

5.3.1. European Refugee Fund :

The main impacts of the ERF have been analysed according to its target groups as follows:

- for final beneficiaries (asylum seekers and refugees): improvements in reception conditions (quality / quantity of material reception conditions such as health, housing, education, social benefits, access to the labour market), and fairer and more effective asylum procedures; easier integration by a decrease in dependence on social welfare, improved access to the labour market, and thus increased participation in social life through civil society organisations and other relevant channels;

- for Member States, the ERF contributes to the economic responsibility undertaken by the Member State in relation to the reception of asylum seekers and refugees and implementation of a common asylum policy; it also supports changes in processes / policies by development of higher standards, fairer and more effective asylum procedures, reduction of the length of asylum procedures, capacity-building, improvement of qualification of staff, exchanges of experiences and best practices at EU level.

- for partners of asylum policy (NGO, Refugee Community Organisations, local and regional authorities): capacity building and development of new services and greater involvement of self-help organisations; improvement of qualification of staff, increased cooperation of services / structures in developing capacity in the area of reception.

- for EU citizens in general: awareness raising on the issue of refugees and asylum seekers and better acceptance of reception centres by local communities.

The potential impacts of the ERF II were screened and assessed for all measures, and it can be said that positive impacts outweigh negative impacts, in particularly as regards social impacts. A redistributive analysis has shown that the target group who benefits most directly is that of asylum seekers and refugees. Most importantly, significant important systemic effects have been identified with regard to the Member States and the organisations working in this area (NGOs and Refugee Community organisations). It must be noted that the situation varies from country to country, most notably in terms of the degree of consolidation of the asylum systems and the experience with the different strands of the programme.

When the types of impact were considered, the most significant were in the social sphere - economic impacts were more indirect and more difficult to identify given the scale of

the Fund. Direct implementation costs have not been quantified and are being addressed in the framework of the monitoring system of the Fund. Indirect and associated costs are more difficult to assess. Environmental impacts have been found to be quite weak, and it has not been possible to differentiate these impacts by target group.

Identified impacts on countries of origin presented a somewhat ambiguous picture – if it was clear that a better management of asylum flows can have positive impacts in the development of these countries, associated risks have been identified. These included, for example, risks of asylum seekers and refugees losing contact with their countries of origin, and also risks of qualified people leaving these countries (brain drain).

To conclude, it can be said that, overall, expected impacts were coherent with the formulation of the main objectives of the Fund. Indeed, the overall impacts reflected the main policy goal of the ERF, i.e. the contribution to the implementation of the common asylum standards and guidelines agreed at EU level and convergence of practices across Member States to support an open and secure European Union, fully committed to the obligations of the Geneva Convention and other relevant human rights instruments, and able to respond to humanitarian needs on the basis of solidarity.

5.3.2. Integration of Third-country nationals

The impacts of the Integration Fund have been identified at two levels: firstly, the general impacts of a greater integration of third country nationals were considered; then, against this background, the specific impacts of the Fund were discussed, taking into account the magnitude of identified needs, and the proposed scale of EU intervention. These specific impacts will in essence represent the added-value of EU intervention in this field.

As regards **general impacts**, better integration of migrants is likely to have many positive economic and social effects both on migrants themselves and on the host community. At EU level, the improved integration of third-country nationals will have a positive **economic impact** by increasing labour supply and thus overcoming shortages in a number of sectors. More migrants in employment will increase both tax revenue and the income from social contributions and so help to fund social protection systems which need to cater for a growing number of elderly people and increased numbers in retirement. Improved integration has obvious positive economic effects on third-country nationals themselves by giving them a better chance of integrating into the labour market and not only of finding a job but one which is more secure and stable with better terms and working conditions.

It must be noted however that further integration and the increased participation of third country nationals in economic activity may have some costs as well as benefits. While firms, consumers and domestic workers with complementary skills may gain, associated costs may include, inter alia, increased expenditure for welfare and social protection systems; a possible adverse effect on domestic workers with similar skills; the administrative costs of implementing an effective immigration policy; and increased expenditure on active labour market policies such as training and job placement services.

The potential **social effects** of integration of immigrants are substantial. Lack of social integration of migrants has often been associated with their social exclusion, which has given rise to increased hostility towards them and to ethnic minorities in general (leading to the rise of racism and xenophobia). Further integration of immigrant populations should lead to a more cohesive and inclusive society overall, where differences are respected and the merits of diversity appreciated. A strengthened dialogue between different groups will increase general understanding of different cultures, traditions and religions.

For migrants themselves, greater integration in society and better access to education as well as the labour market will improve their well being and increase their self-esteem. Having a job and being able to provide for themselves and their families should give them an increased feeling of belonging to society and encourage them to engage in community life and social, cultural and political activities in general. The integration of women will also indirectly benefit future generations, by increasing their chances of integrating into society themselves, of gaining a better understanding of he language and of performing better at school.

Although it is difficult to point to direct beneficial effects on the **environment**, there ought to be generally positive effects on the educational level of EU society, which should make it a better place in which to live, and increased awareness of environmental issues and a wider tendency to take action to protect and improve the natural and physical environment. More active participation in social and political life at local level is, therefore, likely to be accompanied by increased involvement in activities to preserve the local environment and the common heritage.

Against this background, the **specific impacts** of the Integration Fund have been identified as ensuring a strong link with policy developments at EU level, thus supporting the implementation of a common immigration policy. In particular, the following impacts should be expected:

- Create a level playing field in terms of integrating third-country nationals across the Member States. This requires a catch-up process in those countries of recent immigration, where integration policies are only developing.

- In these countries, the Fund will also act as a catalyst, increasing government expenditure on integration of third-country nationals, and thus contributing to the consolidation of a true integration system.

- Strengthening of integration systems will also take place through investments in human resources and upgrading of skills, as well as improved coordination and dialogue between all relevant stakeholders (national and regional authorities, civil society, etc.).

- For those Member States with a history of immigration and integration of third-country nationals, the Fund will contribute towards a fine-tuning of existing policies, focussing on identified shortcomings, and thus increasing their overall effectiveness.

5.3.3. European Return Fund

General impacts of a more effective return policy

An effective implementation of the return policy for illegal migrants living in Member States would have beneficial effects on social cohesion in particular and for the general objective of creating an area of freedom, security and justice for EU citizens. It could also, however, have positive economic effects especially in the long-term.

An effective implementation would, therefore:

- reinforce a managed immigration policy by complementing the control of the EU's external borders and ensuring that those who succeed in entering the Union illegally are returned with minimum delay to the countries they came from;

- help to increase the acceptance of third-country nationals in Member States and, therefore, of diversity, with potential benefits to the competitiveness of the EU economy as well as to social cohesion;

- contribute thereby to increasing employment rates among third-country nationals and, therefore, their contribution to economic activity and the generation of real income;

- facilitate the acceptance of the immigration of workers with the skills required by EU economies faced with a prospective natural decline in working-age population and, therefore, in the labour force;

- reduce the costs on national budgets associated with the detention of illegal migrants;

- give illegal migrants more opportunity to return and settle in their country of origin instead of having to live on the margins of society and very often to work in arduous jobs with poor terms and conditions.

Specific impact of the Return Fund

Action at EU level will have a number of positive effects, including:

- ensuring the common implementation of effective procedures for the return of illegal migrants, which also protect their basic rights and human dignity;

- promoting the adoption of best practices in this regard as well as with regard to the measures taken to provide incentives to the people concerned to return to their country of origin voluntarily;

- encouraging a more intensive exchange of information between Member States on the national initiatives developed, the challenges relating to returns and the management of complex return processes, as well as the relations with third countries in this regard;

- enhancing cost-effectiveness of return measures through joint operations.

5.3.4. External Borders Fund

The main impacts of the Externals Borders Fund would be as follows:

- Positive impact on administrative systems and infrastructures of Member States, who will get more resources and be able to improve coordination and exchanges. On the other hand**,** MS will have to co finance the projects; therefore it could lead to an increase in MS expenditure.

- Impacts for public health, public order and security would be direct and positive, thanks to the improvement of controls, which will make easier to prevent the entry of persons posing a risk from these points of view. Impact on civil society would be indirect but positive (better protection against illegal immigration and public security threats)

- Impacts on the environment would be indirect but possibly negative (more control boats and aircrafts, more physical barriers in border zones, etc.), although some positive impacts can not be excluded (e.g. purchase of less polluting surveillance boats, usage of more efficient technologies)

- From the human rights point of view, increasing MS border control capabilities (in particular through surveillance measures) could mean that more people would be intercepted, refused entry and/or removed to their countries of origin, where they probably face a situation of poverty and lack of freedoms. Increasing controls would make them more dissuasive and perhaps discourage some of these people from trying to immigrate illegally, avoiding them from putting their lives at risk.

- The risks of fraud could be linked to cases of mismanagement, illicit appropriation or corruption, although they not seem to be big as the funds will be managed by MS law enforcement agencies. There is also a risk of giving funding to Member States that don't really need it (e.g. because of being economically strong) or whose burden is lower, especially if objective criteria are not appropriately qualified by risk criteria

- The smoothening of flows of bona fide travellers would have positive economic impacts for business and tourism.

The financial support under the Fund will be developed in complementarity with the work of the European Agency for the management of operational cooperation at external borders.

The Agency has constituted an important step for promoting solidarity between member States in the field of external border management. The Agency has at its objective to facilitate and render more effective the application of the Community acquis related to the external borders, through coordination but also by providing the necessary technical support and expertise. The Fund will be complementary to these efforts. The Fund can provide the necessary financial means for the implementation of joint operations and pilot projects, whenever the Agency will not undertake to do it by itself under Article 3(4) of the Regulation. The Fund will also contribute to the adoption of the necessary measures derived from the risk analysis prepared by the Agency, and to the implementation of the common core curriculum to be established by it.

5.4. Method of Implementation (indicative)

Show below the method(s) chosen for the implementation of the action.

X ***Centralised Management***

X Directly by the Commission

 Indirectly by delegation to:

 Executive Agencies

 Bodies set up by the Communities as referred to in art. 185 of the Financial Regulation

 National public-sector bodies/bodies with public-service mission

X***Shared or decentralised management***

X With Member states

X With Third countries

****Joint management with international organisations (please specify)***

Relevant comments:

The funds within the action programme 'Solidarity and the management of migration flows' will be implemented within the framework of **shared/decentralised management** between the Member States and the Commission, in accordance with Article 53, paragraph 1, point b) of Council Regulation (EC, Euratom) No 1605/2002[82]. The Community actions and the technical assistance of the Commission, as referred to within the instruments,

[82] OJ L 248, 16.9.2002, p.1.

will be implemented by the Commission within the framework of **direct management**.

As for the countries associated with the implementation, application and development of the Schengen Acquis, an agreement between the Commission and these countries needs to be concluded relating to the obligations concerning budgetary and financial control.

One of the key objectives of the programmes is to clearly define the division of responsibility between the Member States and the implementing bodies on the one hand, and the Commission on the other in the execution of the Community budget. All essential elements are defined within the different Funds.

Under Article 274 of the Treaty, in the context of shared management, the conditions allowing the Commission to exercise its responsibilities for implementation of the general budget of the European Communities and the obligations of cooperation on the Member States have to be clarified. These conditions will enable the Commission to satisfy itself that Member States are utilising the Fund in a lawful and correct manner and in accordance with the principle of sound financial management within the meaning of the Financial Regulation.

The need for coherency and transparency are the driving forces in the management modalities of the respective Funds. **Coherency**, as the draft instruments lay down the minimal conditions applicable to the management, internal control and audit systems as well as the involvement of each actor. **Transparency**, as the results and outcome of each part of the instrument are known to the different actors. The compliance of these systems will contribute to the full respect of the principle of **sound financial management**.

To this end, the Member States shall provide an assurance in relation with the management and control systems, according to the rules laid down in the draft instruments. This assurance, completed with its own system audits and on-the-spot controls, will facilitate the Commission's assessment on the legality and regularity of declared expenditure.

The different instruments are developed with common delivery, management and implementation mechanisms. This will enable the Commission and the Member States to set up **common management and control environments**, thus increasing efficiency through the creation of potential synergies.

The following elements are found within the draft instruments:

- **Multi-annual and annual Programming:**

The Funds will be implemented in the framework of **two multiannual programming periods**(respectively 2007-2010 and 2011-2013). These

programming periods will allow the Commission to take into account the effects of the midterm review of the financial perspectives, which is planned in 2010.

The multiannual programming includes the definition of strategic guidelines by the Commission and multiannual programmes by the Member States. These mainly relate to a description of the management and control systems set up, the definition of priorities (and corresponding indicators, results and impacts) and a draft financing plan. This multiannual programme will be assessed and adopted by the Commission.

The necessary provisions for the revision of these programmes are laid down within the draft instruments.

The multiannual programmes will be implemented by means of annual work programmes, provided by the Member States and adopted by the Commission. The annual work programmes relate to the rules for selection of projects and an indicative financial breakdown per objective. The Commission's decision shall indicate the amount allocated to each Member States in full respect of the appropriations allocated under the budgetary procedure.

- **Management and Control Systems**

a) Designation of authorities

The following authorities are to be designed by the Member State:

- A **Responsible Authority**, responsible for the management of the Fund and which will handle all the Communication with the Commission;

- A **Certifying authority**, responsible for the certification of expenditure and application for payment requests prior to transmission to the Commission;

- An **Audit Authority**, responsible for the verification of the compliance, adequacy and the sound operation of the management and control environment.

- With respect of the clear separation of functions, several functions may be carried out by the same body.

b) Definition of the responsibilities of the Member States and the Commission

Member States will be responsible for ensuring sound financial management of the programmes and the legality and regularity of the underlying transactions, give guidance to the designated authorities, and be responsible for the proper and effective use of Community funds. In accordance with the principles of

subsidiarity and proportionality, Member States have the primary responsibility for the implementation and control of the actions covered by the Fund.

The Commission's responsibilities are to satisfy that the systems set up are compliant with the provisions laid down, especially through the assessment of a unqualified opinion submitted by a "compliance assessment body". In the event of a qualified opinion the Member State shall draw up, in agreement with the Commission, an action plan setting out the corrective measures and the timetable for implementation. The Commission is also responsible to satisfy that systems function effectively, on basis of annual control reports and on-the-spot audits.

c) Financial Management

Annual commitments shall be made on the basis of the Commission's decision related the annual programmes.

The following payment scheme is foreseen:

- A prefinancing of 50%;
- A balance payment, preconditioned by a request for payment, a certified declaration of expenditure, an implementation report and an audit report.

The necessary provisions for suspension and interruption of payments, as well as the cancellation of commitments, have been formalised within the draft instruments. In all procedures the Commission will decide after a **contradictory procedure,** where the Member State may present its observations or take corrective measures.

The draft instrument also provides with the necessary provisions, related to financial corrections to be established by the Commission and the Member States.

6. MONITORING AND EVALUATION

6.1. Monitoring system

Under the management system proposed, minimum standard formats will be established in all Member States for the presentation of projects, monitoring and evaluation. In this context common indicators will be defined for the various types of action, for which data will have to be gathered when action implementation reports are presented. During the course of 2005, a preparatory study will be launched to inform the Commission on adequate minimum standards and common standards.

By the same token, a common management system (supported by a common IT application) will be developed in the financial field, in liaison with the Member States, to ensure that implementation of the programmes and the actions funded are monitored on a common basis.

6.2. Evaluation

Several national and Community evaluations are planned, based around the multiannual programming schedule of the Funds. The timetable of evaluations for the External Borders Fund, the Integration Fund and the Return Fund as set out in the respective proposals is in principle as follows:

- no later than 30 June 2009 in the case of the External Borders and Integration Funds, and 30 June 2010 in the case of the Return Fund, a report from the Commission to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions on the application of the criteria used for the annual distribution of resources; together with proposals for amendments if deemed necessary;

- no later than 31 December 2010 an intermediate report from the Commission to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions on the results achieved and on implementation and with a proposal on the Fund future development;

- no later than 30 June 2012 (concerning 2007-2010/2008-2010) and 30 June 2015 (concerning 2011-2013) an evaluation report from the Member State on the results and impacts;

- no later than 31 December 2012 (concerning 2007-2010 and 31 December 2015 (concerning 2011-2013) an ex post evaluation report from the Commission to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions.

The evaluations for the European Refugee Fund follow a slightly different pattern in light of previous evaluations made.

7. ANTI-FRAUD MEASURES

Action taken under the Commission's direct, centralised management (Community action, technical assistance expenditure) will be implemented in accordance with the applicable rules, as defined in the Financial Regulation and its implementing rules. The contracts and grant agreements used will be the models recommended by the Commission and will provide for monitoring by the Commission and the Court of Auditors of the European Communities.

The general rules on the administrative and financial management of action in the Member States, will comprise specific provisions on the management and control of projects by the authorities responsible and provisions on *ex post* checks by the Commission and the Court of Auditors of the European Communities.

8. DETAILS OF RESOURCES

8.1. Objectives of the proposal in terms of their financial cost *(Commitment appropriations in M€)*

a. European Refugee Fund

(Headings of Objectives, actions and outputs should be provided)	Type of output	Av. cost	2007		2008		2009		2010		2011		2012		2013		Total	
			No. outputs	Total cost	No. outputs	Total cost	No. outputs	Total cost	No. outputs	Total cost	No. outputs	Total cost	No. outputs	Total cost	No. outputs	Total cost	No. outputs	Total cost
European Refugee Fund																		
Community Actions																		
Community Actions	Transnational cooperation projects	0,250	18	4,500	42	10,500	42	10,500	45	11,300	59	14,700	60	15,000	61	15,300	327	81,800
Sub-total Action 1				**4,500**		**10,500**		**10,500**		**11,300**		**14,700**		**15,000**		**15,300**	**327**	**81,800**
Actions in the Member States																		
Responsible Authorities	Co-financing			2,800		6,500		6,500		6,900		9,300		9,500		9,700		51,200
Reception and asylum procedures	Projects	0,085	372	31,600	868	73,800	868	73,800	931	79,100	1.242	105,600	1.268	107,800	1.295	110,100	6.845	581,800
Integration	Projects	0,065	243	15,800	568	36,900	568	36,900	608	39,500	812	52,800	829	53,900	848	55,100	4.475	290,900
Voluntary return	Projects	0,175	30	5,300	70	12,300	70	12,300	75	13,200	101	17,600	103	18,000	105	18,400	555	97,100
Sub-total Action 2				**55,500**		**129,500**		**129,500**		**138,700**		**185,300**		**189,200**		**193,300**	**11.320**	**1.021,000**
Sub-total Objective 1				*60,000*		*140,000*		*140,000*		*150,000*		*200,000*		*204,200*		*208,600*		*1.102,800*
Emergency measures																		
Actions in the Member States																		

Responsible Authorities	Co-financing			1,210		1,210		1,210		1,210		1,210		1,210		1,210		8,470
Emergency measures	Projects			8,590		8,590		8,590		8,590		8,590		8,590		8,590		60,130
Sub-total Action 3				**9,800**		**9,800**		**9,800**		**9,800**		**9,800**		**9,800**		**9,800**		**68,600**
Sub-total Objective 1				*9,800*		*9,800*		*9,800*		*9,800*		*9,800*		*9,800*		*9,800*		*68,600*
TOTAL COST				**69,800**		**149,800**		**149,800**		**159,800**		**209,800**		**214,000**		**218,400**		**1.171,400**

b. Integration of third-country nationals

(Headings of Objectives, actions and outputs should be provided)	**Type of output**	**Av. cost**	**2007**		**2008**		**2009**		**2010**		**2011**		**2012**		**2013**		**Total**	
			No. outputs	Total cost	No. outputs	Total cost	No. outputs	Total cost	No. outputs	Total cost	No. outputs	Total cost	No. outputs	Total cost	No. outputs	Total cost	No. outputs	Total cost
Integration of Third-country Nationals																		
Community Actions																		
Community Actions	Transnational cooperation projects	0,250	25	6,200	33	8,200	54	13,400	69	17,300	80	20,000	94	23,600	105	26,200	460	114,900
Sub-total Action 1				**6,200**		**8,200**		**13,400**		**17,300**		**20,000**		**23,600**		**26,200**	**460**	**114,900**
Actions in the Member States																		
Responsible Authorities	Co-financing			4,300		5,500		8,500		10,800		12,300		14,300		15,800		71,500
Admission Procedures	Projects	0,085	101	8,600	134	11,400	216	18,400	278	23,600	319	27,100	380	32,300	421	35,800	1.849	157,200
Introduction Programmes	Projects	0,065	389	25,300	518	33,700	845	54,900	1094	71,100	1258	81,800	1486	96,600	1652	107,400	7.243	470,800
Civic, cultural, religious and political participation	Projects	0,175	97	16,900	128	22,400	209	36,600	271	47,400	312	54,600	368	64,400	409	71,600	1.794	313,900
Capacity building within MS' public and private service providers	Projects	0,175	97	16,900	128	22,400	209	36,600	271	47,400	312	54,600	368	64,400	409	71,600	1.794	313,900
Adjusting european societies to diversity	Projects	0,175	48	8,400	64	11,200	105	18,300	135	23,700	156	27,300	184	32,200	205	35,800	897	156,900
Policy development, monitoring and evaluation	Projects	0,175	48	8,400	64	11,200	105	18,300	135	23,700	156	27,300	184	32,200	205	35,800	897	156,900
Sub-total Action 2				**88,800**		**117,800**		**191,600**		**247,700**		**285,000**		**336,400**		**373,800**	**9.092**	**1.641,100**
Sub-total Objective 1				*95,000*		*126,000*		*205,000*		*265,000*		*305,000*		*360,000*		*400,000*		*1.756,000*
TOTAL COST				**95,000**		**126,000**		**205,000**		**265,000**		**305,000**		**360,000**		**400,000**		**1.756,000**

c. European Return Fund

(Headings of Objectives, actions and outputs should be provided)	Type of output	Av. cost	2007		2008		2009		2010		2011		2012		2013		Total	
			No. outputs	Total cost	No. outputs	Total cost	No. outputs	Total cost	No. outputs	Total cost	No. outputs	Total cost	No. outputs	Total cost	No. outputs	Total cost	No. outputs	Total cost
European Return Fund																		
Community Actions																		
Community Actions	Transnational cooperation projects	0,250	0	0,000	10	2,500	16	3,900	26	6,500	39	9,800	52	13,100	52	13,100	196	48,900
Sub-total Action 1				**0,000**		**2,500**		**3,900**		**6,500**		**9,800**		**13,100**		**13,100**	**196**	**48,900**
Actions in the Member States																		
Responsibe authorities	Co-financing			0,000		2,300		3,100		4,600		6,500		8,300		8,300		33,100
Integrated Return-management	Projects	0,150	0	0,000	68	10,200	106	15,900	178	26,700	267	40,100	357	53,600	357	53,600	1.334	200,100
Enhancement of ooperation between MS in integrated Return-management	Projects	0,250	0	0,000	69	17,200	106	26,500	178	44,400	268	66,900	357	89,300	357	89,300	1.334	333,600
Promotion and application of common standards on return	Projects	0,100	0	0,000	68	6,800	106	10,600	178	17,800	267	26,700	357	35,700	357	35,700	1.333	133,300

Sub-total Action 2				**0,000**		**36,500**		**56,100**		**93,500**		**140,200**		**186,900**		**186,900**	**4.001**	**700,100**
Sub-total Objective 1				*0,000*		*39,000*		*60,000*		*100,000*		*150,000*		*200,000*		*200,000*		*749,000*
TOTAL COST				**0,000**		**39,000**		**60,000**		**100,000**		**150,000**		**200,000**		**200,000**		**749,000**

d. External Borders Fund

(Headings of Objectives, actions and outputs should be provided)	Type of output	Av. cost	2007		2008		2009		2010		2011		2012		2013		Total	
			No. outputs	Total cost	No. outputs	Total cost	No. outputs	Total cost	No. outputs	Total cost	No. outputs	Total cost	No. outputs	Total cost	No. outputs	Total cost	No. outputs	Total cost
External Borders Fund																		

Community Actions																		
Community Actions	Transnational cooperation projects	0,250	13	3,300	13	3,300	17	4,300	22	5,600	25	6,300	31	7,800	45	11,200	167	41,800
Sub-total Action 1				**3,300**		**3,300**		**4,300**		**5,600**		**6,300**		**7,800**		**11,200**	**167**	**41,800**
Actions in the Member States																		
Responsibe authorities	Co-financing			7,500		7,500		9,500		12,000		13,400		16,700		23,300		89,900
Implementation of the common integrated border management system	Projects	0,500	64	31,800	64	31,800	82	41,200	107	53,500	120	60,100	150	75,100	214	107,100	801	400,600
Contribution to the efficient management of the flows of persons at external borders	Projects	0,500	127	63,700	127	63,700	165	82,500	214	107,000	240	120,100	300	150,200	428	214,200	1.603	801,400
Contribution to the uniform and effective application of EU law and overall efficiency of national border guards	Projects	0,500	48	23,900	48	23,900	62	30,900	80	40,100	90	45,000	113	56,300	161	80,300	601	300,400
Contribution to the enhancement of the activities organised by consular services	Projects	0,500	80	39,800	80	39,800	103	51,600	134	66,800	150	75,100	188	93,900	268	133,900	1.002	500,900
Sub-total Action 2				**166,700**		**166,700**		**215,700**		**279,400**		**313,700**		**392,200**		**558,800**	**3.005**	**2.093,200**
Sub-total Objective 1				*170,000*		*170,000*		*220,000*		*285,000*		*320,000*		*400,000*		*570,000*		*2135,000*
TOTAL COST				**170,000**		**170,000**		**220,000**		**285,000**		**320,000**		**400,000**		**570,000**		**2.135,000**

8.2. Administrative Expenditure

The needs for human and administrative resources shall be covered within the allocation granted to the managing DG in the framework of the annual allocation procedure.

8.2.1. Number and type of human resources

Types of post		Staff to be assigned to management of the action using existing and/or additional resources (**number of posts/FTEs**)						
		2007	2008	2009	2010	2011	2012	2013
Officials or temporary staff (XX 01 01)	A*/AD	23	26	29	32	35	37	37,5
	B*, C*/AST	38,75	46	52	58	64	70	70,5
Staff financed by art. XX 01 02		8,5	10	12	14	16	17	18
Other staff financed by art. XX 01 04/05								
TOTAL		70,25	82	93	104	115	124	126

8.2.2. Description of tasks deriving from the action

Title	Description	Number
Management		
Management		4
Policy definition and programming		
Policy Making	Definition of strategy, legal base,…	4
Programme definition	Establishment of annual work programme (i.e. financing decision) and interservice consultation	1
Interface with relevant EC programmes & actions	interservice coordination in order to ensure complementarity-synergy with other policies	2
Interface with other Institutions and Member States	Interface Council,EP ensuring the appropriate reporting, information, questions, briefing requests	2
Information and Communication	1. Information and publicity activities 2. EUROPA Web site	2
Committee interface - chair & secretariat		1

Budgetting	APS,PDB,AAR,BIP,RAL - Preparation - Follow-up - Reporting	1,5
Programme : Reception, selection and award of projects , financial and legal commitments		
Preparation Calls for proposals		2
Reception and evaluation proposals/mult-annual and annual programmes	(also involves staff involved in 12,13,14 and 15)	10
Award decisions		0,5
Financial Commitment	Preparation, maintenance and closure of all financial commitments + subconsequent amendments	2
Legal Commitment	Preparation, Signature, Closure of all juridical commitments + subconsequent amendments	4
Programme : monitoring of projects		
Payments - Initiation	Preparation and Processing of all Prefinancing, Intermediate and Final Payments (including verification supporting docs)	5
Project Monitoring	Receipt and assessment of reports , requests for information, project visits	20
Procurement, control and audit		
Ex- ante verification of transactions, setting up of control standards	Setting up appropriate control standards	3
System Audit	Setting up and monitoring of system audit of Member States (shared management)	10
Financial Audit	Ex-post Audit of expenditure / implementation	8
Internal audit	Verification of compliance with ICS	3
Procurement procedures	Drafting, procedures and autorisation of procurement procedures for projects and technical assistance (evaluation, studies,…) , including JPC, Helpdesk procurement procedures	8
Reporting	Report of Authorinsing Officer, RAA, relations with Court of Auditors…	2
Support services		
Filing and Archiving	Database, digital and hardcopy filing	3
Programme Evaluation	Ex ante - Mid term - Final evaluation	3
IT Support	Specific development of IT Tools related to monitoring and implementation	4
Overhead		
Administration(Overhead)	CIS, Translations,HRM,Logistics,…	21
		126

8.2.3. Sources of human resources (statutory)

(When more than one source is stated, please indicate the number of posts originating from each of the sources)

☐ Posts currently allocated to the management of the programme to be replaced or extended

☐ Posts pre-allocated within the APS/PDB exercise for year n

☐ Posts to be requested in the next APS/PDB procedure

☐ Posts to be redeployed using existing resources within the managing service (internal redeployment)

☐ Posts required for year n although not foreseen in the APS/PDB exercise of the year in question

8.2.4. Other Administrative expenditure included in reference amount (XX 01 04/05 – Expenditure on administrative management)

EUR million (to 3 decimal places)

a. European Refugee Fund

Budget line ***European Refugee Fund***	2007	2008	2009	2010	2011	2012	2013	TOTAL
1 Technical and administrative assistance (including related staff costs)								
Other technical and administrative assistance								
= intra muros : asylum statistics	0,250	0,250	0,250	0,250	0,250	0,250	0,250	1,750
= extra muros : exchange of information, thematic meetings, website projects, computerised administrative and financial management of which for construction and maintenance of computerised management systems	0,500	0,700	0,700	0,700	0,700	0,700	0,700	4,700
Studies (incl. Evaluation)	0,300	0,600	0,300	0,600	0,600	0,400	0,600	3,400
Meetings of experts	0,050	0,050	0,050	0,050	0,100	0,050	0,050	0,400
Publications and informations	0,200	0,000	0,200	0,000	0,200	0,150	0,200	0,950
Total	1,300	1,600	1,500	1,600	1,850	1,550	1,800	9,450

Emergency measures								
1 Technical and administrative assistance (including related staff costs)								
Other technical and administrative assistance								
= intra muros : asylum statistics	0,050	0,050	0,050	0,050	0,050	0,050	0,050	0,350
= extra muros : exchange of information, thematic meetings, website projects, computerised administrative and financial management of which for construction and maintenance of computerised management systems	0,060	0,060	0,060	0,060	0,060	0,060	0,060	0,420
Studies (incl. Evaluation)	0,080	0,080	0,080	0,080	0,080	0,080	0,080	0,560
Meetings of experts								
Publications and informations	0,010	0,010	0,010	0,010	0,010	0,010	0,010	0,070
Total	0,200	0,200	0,200	0,200	0,200	0,200	0,200	1,400

b. Integration of Third-country Nationals

Budget line ***Integration of Third-country nationals***	2007	2008	2009	2010	2011	2012	2013	TOTAL
1 Technical and administrative assistance (including related staff costs)								
Other technical and administrative assistance								
= intra muros : migration statistics	0,300	0,400	0,400	0,400	0,400	0,400	0,400	2,700
= extra muros : exchange of information, thematic meetings, website projects, computerised administrative and financial management of which for construction and maintenance of computerised management systems	0,600	0,800	0,800	0,900	1,000	1,100	1,100	6,300
Studies (incl. Evaluation and Impact Assessment)	0,100	0,300	0,300	0,600	0,700	0,700	0,750	3,450
Meetings of experts	0,050	0,050	0,050	0,050	0,050	0,050	0,050	0,350
Dissemination	0,000	0,100	0,050	0,100	0,150	0,200	0,200	0,800
Publications and informations	0,050	0,100	0,100	0,100	0,250	0,400	0,400	1,400
Total	1,100	1,750	1,700	2,150	2,550	2,850	2,900	15,000

c. European Return Fund

Budget line ***European Return Fund***	2007	2008	2009	2010	2011	2012	2013	TOTAL
1 Technical and administrative assistance (including related staff costs)								
Other technical and administrative assistance								
= intra muros : statistics		0,200	0,200	0,200	0,200	0,250	0,300	1,350
= extra muros : exchange of information, thematic meetings, website projects, computerised administrative and financial management of which for construction and maintenance of computerised management systems		0,600	0,700	0,800	0,900	0,900	1,000	4,900
Studies (incl. Evaluation and Impact Assessment)		0,300	0,300	0,300	0,300	0,300	0,300	1,800
Meetings of experts		0,050	0,050	0,050	0,050	0,050	0,100	0,350
Dissemination		0,100	0,100	0,100	0,100	0,100	0,100	0,600
Publications and informations		0,150	0,150	0,150	0,150	0,150	0,250	1,000
Total	0,000	1,400	1,500	1,600	1,700	1,750	2,050	10,000

d. External Borders Fund

Budget line ***External Borders Fund***	2007	2008	2009	2010	2011	2012	2013	TOTAL
1 Technical and administrative assistance (including related staff costs)								
Other technical and administrative assistance								
= intra muros : statistics	0,300	0,300	0,300	0,400	0,450	0,450	0,450	2,650
= extra muros : exchange of information, thematic meetings, website projects, computerised administrative and financial management of which for construction and maintenance of computerised management systems	0,600	0,900	0,900	1,000	1,000	1,000	1,000	6,400
Studies (incl. Evaluation and Impact Assessment)	0,300	0,400	0,400	0,500	0,500	0,400	0,400	2,900
Meetings of experts	0,100	0,150	0,150	0,150	0,200	0,200	0,200	1,150
Dissemination	0,200	0,200	0,250	0,300	0,400	0,300	0,300	1,950
Publications and informations	0,100	0,300	0,300	0,300	0,350	0,300	0,300	1,950
Total	1,600	2,250	2,300	2,650	2,900	2,650	2,650	17,000

8.2.5. Financial cost of human resources and associated costs not included in the reference amount

EUR million (to 3 decimal places)

Type of human resources	2007	2008	2009	2010	2011	2012	2013	Total
Officials and temporary staff (XX 01 01)	6,669	7,776	8,748	9,72	10,692	11,556	11,664	66,825
Staff financed by Art XX 01 02 (auxiliary, END, contract staff, etc.) (specify budget line)	0,918	1,08	1,296	1,512	1,728	1,836	1,944	10,314
Total cost of Human Resources and associated costs (NOT in reference amount)	**7,587**	**8,856**	**10,044**	**11,232**	**12,420**	**13,392**	**13,608**	**77,139**

Calculation– ***Officials and Temporary agents***

Reference should be made to Point 8.2.1, if applicable

Each FTE rated at 108.000 € per FTE.

Calculation– ***Staff financed under art. XX 01 02***

Reference should be made to Point 8.2.1, if applicable

Each FTE rated at 108.000 € per FTE.

8.2.6 Other administrative expenditure not included in reference amount

EUR million (to 3 decimal places)

	2007	2008	2009	2010	2011	2012	2013	TOTAL
XX 01 02 11 01 – Missions	0,216	0,234	0,238	0,243	0,248	0,253	0,258	1,691
XX 01 02 11 02 – Meetings & Conferences								
XX 01 02 11 03 – Committees	0,460	0,498	0,508	0,518	0,528	0,539	0,550	3,601
XX 01 02 11 04 – Studies & consultations								
XX 01 02 11 05 - Information systems								
2Total Other Management Expenditure (XX 01 02 11)	0,676	0,732	0,746	0,761	0,777	0,792	0,808	5,292
3 Other expenditure of an administrative nature (specify including reference to budget line)								

Total Administrative expenditure, other than human resources and associated costs (NOT included in reference amount)	**8,263**	**9,588**	**10,790**	**11,993**	**13,197**	**14,184**	**14,416**	**68,015**

Calculation - ***Other administrative expenditure <u>not</u> included in reference amount***

		<u>2007</u>
Missions	240 missions * €900	216.000
Compulsory meetings	24 * 19200	460.800