II

*(Acts whose publication is not obligatory)*

# COMMISSION

## COMMISSION DECISION

**of 20 January 2006**

**laying down detailed rules for the implementation of Council Decision 2004/904/EC as regards the eligibility of expenditure within the framework of actions co-financed by the European Refugee Fund implemented in the Member States**

*(notified under document number C(2006) 51/1)*

**(Only the Czech, Dutch, English, Estonian, Finnish, French, German, Greek, Hungarian, Italian, Swedish, Latvian, Lithuanian, Polish, Portuguese, Slovakian, Slovenian and Spanish texts are authentic)**

(2006/399/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Decision 2004/904/EC of 2 December 2004 establishing a European Refugee Fund for the period 2005 to 2010 [1], and in particular Article 21(3) thereof,

Having consulted the Committee established by Article 11(3) of Decision 2004/904/EC,

Whereas:

(1) In order to ensure the efficient implementation of the European Refugee Fund in the Member States, in accordance with the principles of sound financial management, a series of common rules should be adopted on the eligibility of expenditure from the Fund.

(2) In accordance with Article 3 of the Protocol on the position of the United Kingdom and Ireland, annexed to the Treaty on European Union and to the Treaty establishing the European Community, the United Kingdom takes part in Decision 2004/904/EC and by consequence in this present decision.

(3) In accordance with Article 3 of the Protocol on the position of the United Kingdom and Ireland, annexed to the Treaty on European Union and to the Treaty establishing the European Community, Ireland takes part in Decision 2004/904/EC and by consequence in this present decison.

(4) In accordance with Articles 1 and 2 of the Protocol on the position of Denmark, annexed to the Treaty on European Union and to the Treaty establishing the European Community, Denmark does not take part in Decision 2004/904/EC and is not bound by it nor by this present decision,

HAS ADOPTED THIS DECISION:

*Article 1*

This Decision shall apply to the co-financing of actions provided for in Articles 5, 6 and 7 of Decision 2004/904/EC, which are managed by the Member States.

*Article 2*

For the purposes of this Decision:

1. 'Project' shall mean the specific, practical means deployed to implement all or part of an operation by the beneficiaries of grants. Each project will have a well-defined description, duration, budget, objectives, staff assigned to it, and will be implemented by a named legal entity, or a group of legal entities.

2. 'beneficiaries' shall mean the legal entities (such as NGOs, federal, national, regional or local authorities, other non-profit organisations, private or public law companies, international organisations) responsible for implementing projects.

[1] OJ L 381, 28.12.2004, p. 52.

*Article 3*

1. The rules set out in the Annex to this Decision shall be used to determine the eligibility of expenditure of actions financed under the annual programmes referred to in Article 16 of Decision 2004/904/EC.

2. Member States may apply national eligibility rules that are more rigorous than those prescribed in this Decision.

*Article 4*

The present decision is addressed to the Kingdom of Belgium, the Czech Republic, the Federal Republic of Germany, the Republic of Estonia, the Hellenic Republic, the Kingdom of Spain, the French Republic, Ireland, the Italian Republic, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Grand Duchy of Luxembourg, the Republic of Hungary, the Republic of Malta, the Kingdom of the Netherlands, the Republic of Austria, the Republic of Poland, the Portuguese Republic, the Republic of Slovenia, the Slovak Republic, the Republic of Finland, the Kingdom of Sweden, the United Kingdom of Great Britain and Northern Ireland.

Done at Brussels, 20 January 2006.

*For the Commission*
Franco FRATTINI
*Vice-President*

*ANNEX*

**ELIGIBILITY OF EXPENDITURE UNDER THE EUROPEAN REFUGEE FUND (2005-2010)**

1. GENERAL RULES

*Rule No 1*

Costs must be directly linked to the objectives described in Article 1 of Council Decision 2004/904/EC.

*Rule No 2*

Costs must relate to the projects in the fields described in Articles 4 to 7 of Council Decision 2004/904/EC.

*Rule No 3*

Costs must relate to projects undertaken for the benefit of the target groups defined in Article 3 of Council Decision 2004/904/EC.

*Rule No 4*

Costs must be necessary for carrying out the projects covered by the multiannual and annual programmes as approved by the Commission.

*Rule No 5*

Costs must be reasonable and comply with the principles of sound financial management; in particular value for money and cost-effectiveness (e.g. staff costs related to project management and implementation must be proportionate to project size, etc.). Costs shall be considered as eligible expenditure in their entirety or in part, depending on whether they were generated entirely or only in part by the project.

*Rule No 6*

Costs must have actually been incurred, correspond to payments made by the beneficiary, be recorded in the accounts or tax documents of the beneficiary, and be identifiable and controllable.

As a rule, payments by beneficiaries shall be supported by receipted invoices. Where this cannot be done, payments shall be supported by accounting documents or supporting documents of equivalent probative value.

(1) Expenditure related to projects referred to in Articles 5 and 6 of Council Decision 2004/904/EC must be incurred on the territory of the Member State. Expenditure related to projects referred to in Article 7 of Council Decision 2004/904/EC may be incurred on the territory of the Member State and in the country or region of origin or former habitual residence.

(2) For each project, supporting documents (receipted invoices, receipts, other proof of payment or accounting documents of equivalent probative value) shall be recorded, numbered and kept by the beneficiary, where possible in one specific location and, as a general rule, at the headquarters of the beneficiary, for five years after the end date of the project, in case they need to be verified. The Commission reserves the right to request, at any time, any invoices or supporting documents for expenditure relating to projects for verification. Where such invoices or supplementary documents cannot be produced by the beneficiary, the expenditure related to it will not be eligible for co-financing.

Beneficiaries must maintain either a separate project accounting system or an adequate accounting code for all transactions relating to the project.

*Rule No 7*

Projects supported by the Fund shall be cofinanced by public or private sources and shall not be eligible for funding from other sources covered by the Community budget. Project income shall be constituted by financial contributions granted to the project by the Fund, by public or private sources in, including the beneficiary's own contribution, as well as any receipts generated by the project.

'Receipts' for the purposes of this rule covers revenue received by a project during the period covered by the co-financing by the Fund, from sales, rentals, services, enrolment/fees or other equivalent, including interest generated by pre-financing payments of Community funding to the project.

Projects supported by the Fund must be of a non-profit nature. If, at the end of the project, sources of income, including receipts, exceed the amount of expenditure, the European Refugee Fund's participation to the project shall be reduced accordingly.

All sources of income for the project must be recorded in the beneficiary's accounts or tax documents, and must be identifiable and controllable.

2. CATEGORIES OF ELIGIBLE COSTS (AT PROJECT LEVEL)

2.1. **Eligible direct costs**

The eligible direct costs for the project are those costs which, with due regard for the general conditions of eligibility set out in part I above, are identifiable as specific costs directly linked to performance of the project and which can therefore be booked to it directly. In particular, the following direct costs are eligible.

*Rule No 8*

**Staff costs**

The cost of staff assigned to the project, corresponding to real salaries plus social security charges and other remuneration-related costs, shall be eligible. Staff costs may not exceed the salaries and other employment charges normally incurred by the beneficiary, nor exceed the most economical rates in the relevant market. However, levies, taxes or charges (in particular, direct taxes and social security contributions on wages) arising from projects co-financed by the European Refugee Fund constitute eligible costs only where they are actually and definitively borne by the beneficiary of the subsidy.

Staff costs for public officials are only eligible for activities that are not part of their normal routine and for tasks that are specifically linked to implementation of the project, on the following terms:

(a) civil servants or other public officials seconded by duly documented decision of the competent authority, entrusted with implementing a project;

(b) other staff employed solely for the purpose of implementing a project.

*Rule No 9*

**Travel and subsistence costs**

Travel costs shall be eligible on the basis of the actual costs incurred.

Reimbursement rates should be based on the cheapest form of public transport and flights should, as a rule, be permitted only for journeys over 800 km (return trip), or where the geographical destination justifies travelling by air. Where a private car is used, reimbursement is normally made either on the basis of the cost for public transport, or on the basis of mileage rates in accordance with published official rules in the Member State concerned.

Subsistence costs shall be eligible on the basis of real costs or per diems. For daily subsistence, where an organisation has its own daily rates (per diems) they should be applied within ceilings established by the Member State according to the national legislation and practice. Per diems are normally understood to cover local transport (including taxis), accommodation, meals, local telephone calls and sundries.

*Rule No 10*

**Purchase of land**

The cost of purchase of land not built on shall be eligible for co-financing subject to the following three conditions without prejudice to the application of stricter national rules:

(a) there shall be a direct link between the land purchase and the objectives of the project co-financed;

(b) the land purchase may not represent more than 10 % of the total eligible expenditure of the project, unless a higher percentage is fixed in the decision on co-financing approved by the Commission;

(c) a certificate shall be obtained from an independent qualified valuer or duly authorised official body confirming that the purchase price does not exceed the market value.

*Rule No 11*

**Purchase of real estate, construction, or renovation of real estate or rental of real estate**

Purchase of real estate, i.e. buildings already constructed and the land on which they are built, or construction or renovation of real estate, is eligible for co-financing where there is a clear link between the purchase and the objectives of the project concerned, under the conditions set out below, and without prejudice to the application of stricter national rules:

(a) a certificate shall be obtained from an independent qualified valuer or duly authorised official body establishing that the price does not exceed the market value, and either attesting that the real estate is in conformity with national regulations or specifying the points which are not in conformity where their rectification by the final beneficiary is foreseen under the action;

(b) the real estate shall not have received, within the previous 10 years, a national or Community grant which would give rise to a duplication of aid in the event of co-financing of the purchase by the European Refugee Fund;

(c) the real estate is to be used for the purpose stated in the project for a period of at least five years after the end date of the project unless the Commission specifically authorises otherwise;

(d) the real estate may not be used for any purpose other than the implementation of the project.

In the case of renovation only conditions (c) and (d) above apply.

Rental of real estate is eligible for co-financing where there is a clear link between the rental and the objectives of the project concerned, under the conditions set out below, and without prejudice to the application of stricter national rules:

(a) the purchase of the real estate shall not have received, within the previous 10 years, a national or Community grant which would give rise to a duplication of aid in the event of co-financing of the rental by the European Refugee Fund;

(b) the real estate may not be used for any purpose other than the implementation of the project.

Either in the case of purchase of real estate, construction or renovation of real estate, or rental of real estate, the real estate shall have the technical characteristics necessary for the project and comply with applicable norms and standards.

Rental of office space for the normal activities of the beneficiary is to be considered as indirect costs (see rule No 22).

*Rule No 12*

**Purchase of equipment**

In general the preferred option for equipment (e.g. PCs, furniture, vehicles, etc.) is leasing or renting (rule No 13).

If leasing or renting are not possible because of the short duration of the project or the rapid depreciation of value, purchase costs may be eligible.

The equipment shall have the technical characteristics necessary for the project and comply with applicable norms and standards.

The purchase costs for equipment shall be eligible provided that these correspond to normal market costs and the value of the items concerned is written off in accordance with the tax and accounting rules applicable to the beneficiary. Only the proportion of depreciation of the item corresponding to the duration of the project may be taken into account.

The purchase of second-hand equipment may be regarded as eligible expenditure provided it further complies with the following two conditions, without prejudice to the application of stricter national rules:

(a) the seller of the equipment shall provide a declaration stating its origin, and confirm that at no point during the previous seven years has it been purchased with the aid of national or Community grants;

(b) the price of the equipment shall not exceed its market value and shall be less than the cost of similar new equipment.

*Rule No 13*

**Leasing**

Expenditure incurred in relation to leasing operations is eligible for co-financing under the European Refugee Fund subject to the rules set out in points A and B.

A. AID VIA LESSOR

A.1. The lessor is the indirect recipient of the Community co-financing, which is used for the reduction of the lease rental payments made by the lessee in respect of assets covered by the leasing contract.

A.2. Leasing contracts for which Community aid is paid shall include an option to purchase or provide for a minimum leasing period equal to that of the useful life of the asset to which the contract relates.

A.3. Where a leasing contract is terminated before expiry of the minimum leasing period without the prior approval of the competent authorities, the lessor shall undertake to repay to the national authorities concerned (for credit to the European Refugee Fund) that part of the Community aid corresponding to the remainder of the leasing period.

A.4. The purchase of the asset by the lessor, supported by a receipted invoice or an accounting document of equal probative value, constitutes the expenditure eligible for co-financing. The maximum amount eligible for Community co-financing shall not exceed the market value of the asset leased.

A.5. Costs connected with the leasing contract (notably tax, lessor's margin, interest refinancing costs, overheads, insurance charges), other than the expenditure referred to in point A.4, are not eligible expenditure.

A.6. Community aid paid to the lessor shall be used in its entirety for the benefit of the lessee by means of a uniform reduction in all the leasing rentals for the duration of the leasing period.

A.7. The lessor shall demonstrate that the benefit of the Community aid will be transferred fully to the lessee by establishing a breakdown of the rental payments or by an alternative method giving equivalent assurance.

A.8. The costs referred to in point A.5, the use of any fiscal benefits arising from the leasing operation, and other conditions of the contract shall be equivalent to those applicable in the absence of any Community financial intervention.

B. AID TO LESSEE

B.1. The lessee is the direct recipient of the Community co-financing.

B.2. The leasing rentals paid to the lessor by the lessee, supported by a receipted invoice or an accounting document of equivalent probative value, constitute the expenditure eligible for co-financing.

B.3. In the case of leasing contracts which include an option to purchase or which provide for a minimum leasing period equal to the useful life of the asset to which the contract relates, the maximum amount eligible for Community co-financing shall not exceed the market value of the asset leased. Other costs connected with the leasing contract (tax, lessor's margin, interest refinancing costs, overheads, insurance charges, etc.) are not eligible expenditure.

B.4. The Community aid in respect of leasing contracts referred to under point B.3 shall be paid to the lessee in one or more tranches in respect of leasing rentals effectively paid. Where the term of the leasing contract exceeds the final date of the project under the Community co-financing, only expenditure in relation to leasing rentals falling due and paid by the lessee up to the final date of the project under the Community co-financing may be considered eligible.

B.5. In the case of leasing contracts which do not contain an option to purchase and whose duration is less than the period of the useful life of the asset to which the leasing contract relates, the leasing rentals are eligible for co-financing by the Community in proportion to the period of the eligible project. However, the lessee must be able to demonstrate that leasing was the most cost-effective method for obtaining the use of the equipment. Where the costs would have been lower if an alternative method (for example renting of the equipment) had been used, the additional costs shall be deducted from the eligible expenditure.

*Rule No 14*

**Costs of consumables and supplies**

The costs of consumables and supplies are eligible, provided that they are identifiable and directly assigned to the project. They include any material or assistance provided to persons belonging to the target groups defined in Article 3 of Council Decision 2004/904/EC, e.g. food, clothing, medical assistance, material to reconstruct or renovate real estate, etc. Supplies include food supplies for persons belonging to the target groups defined in Article 3 of Council Decision 2004/904/EC.

However, costs such as office supplies and stationary (pens, paper, folders, ink cartridges, diskettes), office electricity supply, telephone and postal services, Internet connection time, computer software, etc. are to be considered as indirect costs when they are provided to the team implementing the project (see rule No 22).

*Rule No 15*

**Expenditure on subcontracting**

As a general rule beneficiaries must have the capacity to carry out the work themselves. Subcontracting is derogation from this general rule and is limited to specific cases.

Subcontracts may relate only to a limited part of the project. Therefore, in general, core elements of the project can not be subcontracted.

For all subcontracts, subcontractors shall undertake to provide the management and control bodies with all necessary information relating to the subcontracted activities.

Where relevant, subcontracting of parts of the project shall be undertaken by project beneficiaries in accordance with public procurement rules.

Beneficiaries shall award the contract to the tender offering best value for money, that is to say, to the tender offering the best price-quality ratio, in compliance with the principles of transparency and equal treatment for potential contractors, care being taken to avoid any conflict of interest.

Without prejudice to the application of stricter national rules, expenditure relating to the following subcontracts is ineligible for co-financing by the European Refugee Fund:

(a) subcontracting which adds to the cost of execution of the project without adding proportionate value to it;

(b) subcontracting with intermediaries or consultants in which the payment is defined as a percentage of the total cost of the project unless such payment is justified by the final beneficiary by reference to the actual value of the work or services provided.

*Rule No 16*

**Costs deriving directly from the requirements linked to EU co-financing**

Costs relating to publicity (dissemination of information, specific evaluation of the project, translation, reproduction, etc.) given to the project and EU co-financing are eligible.

*Rule No 17*

**Bank charges on accounts**

Where co-financing by the European Refugee Fund requires the opening of a separate account or accounts for implementing a project, the bank charges for opening and administering the accounts are eligible.

*Rule No 18*

**Expert fees**

Costs relating to legal fees for advice, notary fees, the costs of technical or financial expertise or independent evaluation, and accountancy or audit costs are eligible if they are directly linked to the project, and are necessary for its preparation or implementation or if they relate to requirements by the Responsible Authority.

*Rule No 19*

**Costs of guarantees provided by a bank or other financial institution**

These costs are eligible to the extent that the guarantees are required by national or Community legislation or in the Commission Decision approving the co-financing.

*Rule No 20*

**VAT and other taxes and charges**

VAT does not constitute eligible expenditure except where it is genuinely and definitively borne by the final beneficiary, or individual recipient within the aid schemes pursuant to Article 87 of the Treaty and in the case of aid granted by the bodies designated by the Member States. VAT which is recoverable, by whatever means, may not be considered eligible, even if it is not actually recovered by the final beneficiary or individual recipient.

Where the final beneficiary or individual recipient is subject to a flat-rate scheme under Title XIV of the Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment [1], VAT paid is considered recoverable for the purposes of point (a).

*Rule No 21*

**Expenditure by public administrations relating to the execution of projects**

The following expenditure by public administrations is eligible for co-financing outside technical assistance if it relates to the execution of a project, provided that it does not arise from the statutory responsibilities of the public authority or the authority's day-to-day management, monitoring and control tasks:

(a) costs of professional services rendered by a public service in the implementation of an action. The costs must be either invoiced to a final beneficiary (public or private) or certified on the basis of documents of equivalent probative value which permit the identification of real costs paid by the public service concerned in relation to that project;

[1] OJ L 145, 13.6.1977, p. 1. Directive as last amended by Directive 2005/92/EC (OJ L 345, 28.12.2005, p. 19).

(b) costs of the implementation of a project, including the expenditure related to the provision of services, borne by a public authority that is itself the final beneficiary and which is executing the project on its own account without recourse to outside engineers or other firms. The expenditure concerned must relate to expenditure actually and directly paid on the co-financed project and must be certified on the basis of documents which permit the identification of real costs paid by the public service concerned in relation to that project.

2.2. **Eligible indirect costs**

*Rule No 22*

**Indirect costs**

A fixed percentage of overheads up to a maximum of 7 % of the total amount of eligible direct costs shall be eligible as indirect costs, provided this figure is included in the project's forward budget. Indirect costs shall be eligible provided that they do not include costs assigned to another heading of the budget for the project, that they cannot be charged direct and that they are not financed from other sources. Indirect costs shall not be eligible where the grant agreement or equivalent form of legal instrument concluded with the beneficiary concerns the financing of a project conducted by an entity which is already receiving an operating grant from the Community and/or a national authority.

3. INELIGIBLE EXPENDITURE

*Rule No 23*

**Ineligible costs**

(1) The following costs shall not be eligible: return on capital, debt and debt service charges, debit interest, foreign exchange commissions and exchange losses, provisions for losses or potential future liabilities, interest owed, VAT (unless covered by the conditions set out in rule No 20), doubtful debts, fines, financial penalties, litigation costs, and excessive or reckless expenditure.

(2) Entertainment costs exclusively for project staff are not eligible. Reasonable hospitality costs at social events justified by the project, such as the end of project event or meetings of the project steering group are permitted.

(3) Costs declared by the beneficiary and covered by another project or work programme receiving a Community grant are not eligible.

*Rule No 24*

**Contributions in kind**

Contributions in kind shall not normally constitute eligible costs.

In the case of contributions in kind, a financial value shall be placed on the contributions and the same amount will be included in the costs of the project as ineligible costs and in receipts from the action.

However, in duly substantiated exceptional cases, the cofinancing of the project may be made up in part by contributions in kind from third parties. Such contributions shall not exceed 30 % of eligible project costs, or 20 % for Member States covered by the Cohesion Fund.

In this case, the following rules shall apply:

— contributions in kind may consist only in the provision of equipment or materials, research or professional activity, or unpaid voluntary work; under no circumstance may the cost of land or real estate be considered as a contribution in kind,

— the value of the contributions in kind can be independently assessed and audited, and cannot exceed the costs actually borne and duly supported by accounting documents of the third parties who made these contributions to the beneficiary free of charge but bear the corresponding costs, nor may it exceed the costs generally accepted on the market in question for the type of contribution concerned when no costs are borne; in the case of unpaid voluntary work, the value of that work is determined taking into account the amount of time spent and the normal hourly and daily rate for the work carried out.

4. CATEGORIES OF MANAGEMENT, IMPLEMENTATION, MONITORING AND CONTROL EXPENDITURE ELIGIBLE FOR FINANCING UNDER 'TECHNICAL AND ADMINSITRATIVE ASSISTANCE'

The following costs shall be eligible for financing under the technical assistance provided for in Article 18 of Council Decision 2004/904/EC:

(a) costs linked to preparation, selection, evaluation, and follow-up of the actions co-financed by the European Refugee Fund. This may include studies, seminars, information actions, evaluation, and the acquisition and leasing or purchase of computerised systems for management, monitoring and evaluation;

(b) costs linked to audits and on-the-spot controls and checks of the projects;

(c) costs linked to the visibility of European Refugee Fund co-financing;

(d) expenditure on meetings of committees relating to the implementation of the multiannual and annual programmes. This expenditure may also include the costs of experts and other participants in these committees, where the chairperson of such committees considers their presence essential to the effective implementation of the cofinancing of the Fund.

Expenditure linked to remuneration, including social security contributions, are eligible only in the following cases:

— permanent officials, temporarily seconded by formal decision of the relevant public authority, entrusted with performing the tasks listed in points (a) and (b) above,

— temporary agents or private sector staff employed solely for the purpose of performing the tasks listed in points (a), (b) and (d) above.

The period of secondment or employment may not exceed the final date for the eligibility of expenditure laid down in the cofinancing decision adopted by the Commission.

Expenditure on the salaries of civil servants or other public officials in carrying out such actions is not eligible if such actions arise from the statutory responsibilities of the public authority or the authority's day-to-day management, monitoring and control tasks.