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►B DECISION No 575/2007/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 23 May 2007

establishing the European Return Fund for the period 2008 to 2013 as part of the General Programme 'Solidarity and Management of Migration Flows'

(OJ L 144, 6.6.2007, p. 45)

Amended by:

		Official Journal		
		No	page	date
►M1	Decision No 258/2013/EU of the European Parliament and of the Council of 13 March 2013	L 82	1	22.3.2013

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DECISION No 575/2007/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 23 May 2007

establishing the European Return Fund for the period 2008 to 2013 as part of the General Programme 'Solidarity and Management of Migration Flows'

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Articles 63(2)(b) and 63(3)(b) thereof,

Having regard to the proposal from the Commission,

Having regard to the Opinion of the European Economic and Social Committee ([1]),

Having regard to the Opinion of the Committee of the Regions ([2]),

Acting in accordance with the procedure laid down in Article 251 of the Treaty ([3]),

Whereas:

(1) With a view to the progressive establishment of an area of freedom, security and justice, the Treaty provides both for the adoption of measures aimed at ensuring the free movement of persons, in conjunction with accompanying measures relating to external border controls, asylum and immigration, and for the adoption of measures relating to asylum, immigration and the safeguarding of the rights of third-country nationals.

(2) The European Council, at its 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 the fair treatment of third-country nationals and the 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 with a view to 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.

([1]) OJ C 88, 11.4.2006, p. 15.
([2]) OJ C 115, 16.5.2006, p. 47.
([3]) Opinion of the European Parliament of 14 December 2006 (not yet published in the Official Journal) and Council Decision of 7 May 2007.

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(4) On 28 February 2002, the Council adopted the Comprehensive Plan to combat illegal immigration and trafficking of human beings in the European Union ([1]) in which it stressed that re-admission and return policy constitutes 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 administrative cooperation between Member States.

(5) The Council's Return Action Programme of 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) The Council Conclusions on the priorities for the successful development of a common re-admission policy of 2 November 2004 emphasise that Community re-admission agreements make an important contribution to an effective joint migration management and play a valuable role in the fight against illegal immigration. They are an important element in the framework of the dialogue and cooperation between the European Union and the countries of origin, former residence and transit of illegal immigrants.

(8) 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 cooperation with Member States, preparatory actions were initiated for the period 2005 and 2006.

(9) 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 (hereinafter referred to as 'the Fund') and the establishment of the Fund by 2007, taking into account the evaluation of the preparatory phase.

(10) 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 cooperation 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

([1]) OJ C 142, 14.6.2002, p. 23.

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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.

(11) 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 Community legislation on return.

(12) No funding should be provided for in 2007 under this Decision, in order to be able to take into account the results of preparatory actions on return in 2005 and 2006, on the basis of a report by the Commission on the evaluation of the preparatory actions.

(13) The common standards concerned are in particular Council Directive 2001/40/EC of 28 May 2001 on the mutual recognition of decisions on the expulsion of third-country nationals ([1]) 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 Directive 2001/40/EC on the mutual recognition of decisions on expulsion of third-country nationals ([2]), and Council Decision 2004/573/EC of 29 April 2004 on the organisation of joint flights for removals from the territory of two or more Member States, of third-country nationals who are subjects of individual removal orders ([3]).

(14) 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.

(15) Member States should ensure that actions under the Fund respect the obligations derived from fundamental rights, laid down in particular in the European Convention for the Protection of Human Rights and Fundamental Freedoms (the European Convention on Human Rights), the Charter of Fundamental Rights of the European Union, the Geneva Convention relating to the Status of Refugees of 28 July 1951 as supplemented by the New York Protocol of 31 January 1967, and other relevant international instruments, such as the 1989 United Nations Convention on the Rights of the Child, where applicable.

(16) Bearing in mind that collective expulsion is prohibited under Protocol 4 to the European Convention on Human Rights, only persons who are the subject of individual removal orders should be returned via joint return operations eligible for funding under this Decision.

([1]) OJ L 149, 2.6.2001, p. 34.
([2]) OJ L 60, 27.2.2004, p. 55.
([3]) OJ L 261, 6.8.2004, p. 28.

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(17) In the light of the scope and the purpose of the Fund, it should not, in any event, support actions with respect to areas and centres for holding persons in third countries.

(18) As stated in the Return Action Programme, approved by the Council on 28 November 2002, and constantly reaffirmed in the European Union instruments in this area, such as in particular the Council Conclusions on voluntary return of 2 November 2005, voluntary return is an important component of a balanced, effective and sustainable approach to the return.

(19) Eligible actions within the scope of the integrated management of return should take account of the specific situation of vulnerable persons.

(20) To enhance efficiency in return management at national level, the Fund should also cover actions relating to voluntary return of persons who are not under an obligation to leave the territory, such as applicants for asylum who have not yet received a negative decision, or persons enjoying a form of international protection within the meaning of Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third-country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted ([1]), or persons enjoying temporary protection within the meaning of 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 ([2]).

(21) A primary objective of this Decision 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 United Nations High Commissioner for Refugees (UNHCR) and the International Organisation for Migration (IOM), offer return schemes focusing on effective and sustainable returns through various measures. Where appropriate, integrated return plans should be regularly assessed and adjusted.

(22) To promote the voluntary return of persons, in particular persons who are under no obligation to leave the territory, provision should be made for incentives for such returnees, such as preferential treatment by providing enhanced return assistance. This kind of voluntary return is both in the interests of a dignified return of returnees, as well as of the authorities in terms of cost-effectiveness. Member States should be encouraged to give preference to voluntary return.

([1]) OJ L 304, 30.9.2004, p. 12.
([2]) OJ L 212, 7.8.2001, p. 12.

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(23) However, from a policy point of view, voluntary and enforced return are interlinked and have a mutually reinforcing effect 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. This Decision should therefore support actions of Member States to facilitate enforced return.

(24) Moreover, the major obstacles experienced by Member States in the field of return often 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 the necessary travel documents. In order to overcome such problems, Member States should be encouraged to improve the cooperation 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.

(25) It is also imperative for this Decision to support, in those 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 under 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 should only be 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.

(26) Moreover, those measures should be in synergy with the actions supported by the Community instruments on external assistance, in particular the thematic programme on asylum and migration.

(27) This Decision is designed to form part of a coherent framework which also includes Decision No 573/2007/EC of the European Parliament and of the Council of 23 May 2007 establishing the European Refugee Fund for the period 2008 to 2013 as part of the General programme 'Solidarity and Management of Migration Flows' ([1]), Decision No 574/2007/EC of the European Parliament and of the Council of 23 May 2007 establishing the External Borders Fund for the period 2007 to 2013 as part of the General programme 'Solidarity and Management of Migration Flows' ([2]) and Council Decision 2007/.../EC of ... establishing the European Fund for the Integration of Third-country Nationals for the period 2007 to 2013 as part of the General programme 'Solidarity and Management of Migration Flows' ([3]), which aims to address the issue of fairly sharing responsibilities

([1]) See page 1 of this Official Journal.
([2]) See page 22 of this Official Journal.
([3]) Not yet published in the Official Journal.

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between Member States as concerns the financial burden arising from the introduction of integrated management of the European Union's external borders and from the implementation of common policies on asylum and immigration, as developed in accordance with Title IV of Part Three of the Treaty.

(28) The European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union, established in accordance with Council Regulation (EC) No 2007/2004 [1] (hereinafter referred to as 'the Agency'), has as one of its tasks to provide the necessary assistance for organising joint return operations by 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 coordinated 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 Decision.

(29) The support provided by the Fund would be more efficient and better targeted if co-financing of eligible actions were based on strategic multiannual programming, drawn up by each Member State in dialogue with the Commission.

(30) On the basis of strategic guidelines adopted by the Commission, each Member State should prepare a multiannual programming document taking into account its specific situation and needs and setting out its development strategy that should constitute the framework for the implementation of the actions to be listed in the annual programmes.

(31) In the context of shared management as referred to in Article 53(1)(b) of Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities [2] (hereinafter referred to as 'the Financial Regulation'), the conditions allowing the Commission to exercise its responsibilities for implementation of the general budget of the European Union should be specified and the obligations for the cooperation of the Member States clarified. Applying those conditions would enable the Commission to satisfy itself that Member States are using the Fund in a lawful and correct manner and in accordance with the principle of sound financial management within the meaning of Articles 27 and 48(2) of the Financial Regulation.

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

(33) Member States should adopt adequate measures to guarantee the proper functioning of the management and control system and the

[1] OJ L 349, 25.11.2004, p. 1.
[2] OJ L 248, 16.9.2002, p. 1. Regulation as amended by Regulation (EC, Euratom) No 1995/2006 (OJ L 390, 30.12.2006, p. 1).

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quality of implementation. To this end, it is necessary to establish general principles and necessary functions which all programmes should fulfil.

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

(35) The obligations on the Member States as regards management and control systems, the certification of expenditure, and the prevention, detection and correction of irregularities and infringements of Community law should be specified in order to guarantee the efficient and correct implementation of their multiannual and annual programmes. In particular, as far as management and control are concerned, it is necessary to establish the arrangements by which Member States ensure that the relevant systems are in place and function satisfactorily.

(36) Without prejudice to the Commission's powers as regards financial control, cooperation between the Member States and the Commission in this field should be encouraged.

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

(38) 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.

(39) Bearing in mind the importance of visibility of Community funding, the Commission should provide guidance facilitating the proper acknowledgement of the support received by any authority, non-governmental organisation, international organisation or other entity receiving a grant under this Fund, taking into account the practice with respect to other instruments under shared management, such as the Structural Funds.

(40) This Decision establishes a financial envelope for the entire duration of the programme, which constitutes the prime reference for the budgetary authority during the annual budgetary procedure, within the meaning of point 37 of the Inter-institutional Agreement of 17 May 2006 between the European Parliament, the Council and the Commission on budgetary discipline and sound financial management ([1]).

(41) Since the objective of this Decision, 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 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 in order to achieve this objective.

([1]) OJ C 139, 14.6.2006, p. 1.

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(42) 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 ([1]).

(43) Since the measure of this Decision relating to the adoption of strategic guidelines is of general scope and is designed to amend non-essential elements of this Decision, inter alia by deleting some of those elements or by supplementing this Decision by the addition of new non-essential elements, it should be adopted in accordance with the regulatory procedure with scrutiny provided for in Article 5a of Decision 1999/468/EC. On grounds of efficiency, the normal time-limits for the regulatory procedure with scrutiny should be curtailed for the adoption of the strategic guidelines.

(44) 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 not bound by it or subject to its application.

(45) In accordance with Article 3 of the Protocol on the position of the United Kingdom and Ireland, annexed to the Treaty on European Union and to the Treaty establishing the European Community, Ireland has notified, by letter of 6 September 2005, its wish to take part in the adoption and application of this Decision.

(46) In accordance with Article 3 of the Protocol on the position of the United Kingdom and Ireland, annexed to the Treaty on European Union and to the Treaty establishing the European Community, the United Kingdom has notified, by letter of 27 October 2005, its wish to take part in the adoption and application of this Decision.

(47) In accordance with the second indent of paragraph 2 of Article 67 of the Treaty, Council Decision 2004/927/EC 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 ([2]) rendered the procedure referred to in Article 251 of the Treaty applicable in the areas covered by Article 62(1), (2)(a) and (3) and Articles 63(2)(b) and (3)(b) of the Treaty,

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 Return Fund (hereinafter referred to as ‘the Fund’) as part of a coherent framework, which also includes Decision No 573/2007/EC, Decision No 574/2007/EC and Decision

([1]) OJ L 184, 17.7.1999, p. 23. Decision as amended by Decision 2006/512/EC (OJ L 200, 22.7.2006, p. 11).
([2]) OJ L 396, 31.12.2004, p. 45.

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2007/.../EC, in order to contribute to the strengthening of the area of freedom, security and justice and the application of the principle of solidarity between the Member States.

This Decision defines the objectives to which the Fund contributes, its implementation, the available financial resources and the distribution criteria for the allocation of the available financial resources.

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

Article 2

General objective 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 and by providing for joint actions to be implemented by Member States or national actions that pursue Community objectives under the principle of solidarity, taking account of Community legislation in this field and in full compliance with fundamental rights.

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

Article 3

Specific objectives

1. The Fund shall contribute to achieving 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 cooperation between Member States within the framework of integrated return management and its implementation;

(c) the promotion of an effective and uniform application of common standards on return in line with policy developments in this field.

2. Integrated return management shall include, in particular, the development and implementation, by the competent authorities of the Member States, of integrated return plans which:

(a) are based on a comprehensive assessment of the situation in the Member State with respect to the targeted population or a targeted specific issue concerning return and the challenges with respect to the operations envisaged (such as those related to obtaining travel documents and other practical obstacles to return), taking into account, where appropriate, the relevant caseload. The comprehensive assessment shall be drawn up in cooperation with all relevant authorities and partners;

(b) aim to achieve a wide set of measures encouraging voluntary return schemes of third-country nationals, in particular for those who do not or no longer fulfil the conditions for entry and stay on its territories and, where necessary, implementing enforced return operations with respect to such persons, in full compliance with humanitarian principles and respect for their dignity;

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(c) include a plan and/or time table and, where appropriate, provide for a periodic evaluation mechanism allowing for adjustment of the plan and assessment of the impact of the plan in practice; and

(d) include, where Member States consider it appropriate, measures to facilitate cooperation between the competent administrative, law enforcement and judicial bodies, where appropriate at different levels of government.

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 return assistance, may be provided for 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)(a), and in particular the following, shall be eligible for support from the Fund:

(a) the establishment or improvement of an effective, stable and lasting operational cooperation 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 removals;

(b) the promotion of ways and means to provide information on return as early as possible in asylum and immigration procedures and to encourage individually third-country nationals to make use of the possibility of voluntary return;

(c) the facilitation of voluntary returns of third-country nationals, in particular through assisted voluntary return programmes, with a view to ensuring the effectiveness and sustainability of returns;

(d) developing modes of cooperation between different levels of national, regional, local, urban and other public authorities enabling officials to swiftly gain information on return experiences and practices elsewhere and, when possible, to pool resources;

(e) the simplification and implementation of enforced returns of third-country nationals who do not or no longer fulfil the conditions for entry and stay, 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)(b), and in particular the following, shall be eligible for support from the Fund:

(a) cooperation in the gathering and provision to potential returnees of information on the country of origin, former residence or transit;

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(b) cooperation 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 removals;

(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 cooperation 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 and best practices, support and advice in dealing with the return of particularly vulnerable groups;

(f) organisation 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 sustainable return of persons to the country of origin or former residence.

3. Actions relating to the objective laid down in Article 3(1)(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 implement or enforce speedily removal decisions with full respect for 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) organisation of seminars and joint training for the staff of the competent national, regional, local, urban and other 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 Agency in the area of return.

4. Actions provided for by paragraphs 1, 2 and 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.

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Article 5

Eligible measures in the Member States

Actions supported may include the following measures:

(1) in all cases of return, information to third-country nationals on return in general, counselling to individuals on the possibilities for voluntary return, translation costs, procurement of indispensable travel documents, costs of necessary pre-return medical checks, costs of travel and food for returnees and escorts, including medical staff and interpreters, accommodation for escorts including medical staff and interpreters, costs of transport in the Member State and up to the country of return and cooperation with the authorities of the country of origin, former residence or transit;

(2) in all cases of return, specific assistance for 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;

(3) additionally, in the case of forced return of third-country nationals who do not or no longer fulfil the conditions for entry and stay, costs for travel, food and 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;

(4) additionally, in the case of voluntary return of third-country nationals who do not or no longer fulfil the conditions for entry and stay, assistance to returnees in preparing the return, as well as essential expenses before return;

(5) additionally, in the case of voluntary return of third-country nationals who are not under an obligation to leave the territory of the Member States and in other cases, where considered appropriate by Member States, limited financial contribution for 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;

(6) 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 the respect of obligations under international instruments affecting the treatment of returnees, and enhance cooperation, as well as missions to assess the results of return policies in third countries;

(7) in the case of operational cooperation 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;

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(8) in the case of reintegration measures for third-country nationals who are not under an obligation to leave the territory of a Member State, 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;

(9) in the case of reintegration measures for third-country nationals who do not or no longer fulfil the conditions for entry and stay, where Member States 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

Community actions

1. At the Commission's initiative, up to 7 % of the Fund's available resources may be used to finance transnational actions or actions of interest to the Community as a whole (hereinafter referred to as 'Community actions') concerning return policy and measures applicable to the target groups 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 the exchange 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 return policies, including on the use of state-of-the-art technology, in particular to encourage more comparative research relating to the impact of past and present return programmes;

(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 and application by Member States of common statistical tools, methods and indicators for measuring policy developments in the field of return, in particular with a view to the dissemination of statistics disaggregated according to voluntary and forced returns;

(g) support the development and regular updating, in cooperation with the Agency, of a common handbook on best practices in the field of return, including on escorts;

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(h) provide Member States with support services in case of duly substantiated emergency situations requiring urgent action.

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).

Article 7

Target groups

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

(a) all third-country nationals who have not yet received a final negative decision in relation to their request for international protection in a Member State and who may choose to make use of voluntary return, provided they have not acquired a new nationality and have not left the territory of that Member State;

(b) all third-country nationals enjoying a form of international protection within the meaning of Directive 2004/83/EC, or temporary protection within the meaning of Directive 2001/55/EC in a Member State, and who choose to make use of voluntary return, provided they have not acquired a new nationality and have not left the territory of that Member State;

(c) all third-country nationals who do not or no longer fulfil the conditions for entry and/or stay in a Member State and who, in accordance with the obligation to leave the territory of that Member State, make use of voluntary return;

(d) all other third-county nationals who do not or no longer fulfil the conditions for entry and/or stay in a Member State.

2. Third-country national means any person who is not a citizen of the Union 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 19.

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

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Article 9

Programming

1. The objectives of the Fund shall be pursued within the framework of the multiannual programming period from 2008 to 2013, subject to a mid-term review in accordance with Article 22. The multiannual programming system shall include the priorities and a process for management, decision making, auditing and certification.

2. The multiannual programmes approved 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 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. In relation to audit provisions, the means employed by the Commission and the Member States shall vary according to the size of the Community contribution. The same principle shall apply to provisions on evaluation and to the reports on multiannual and annual programmes.

Article 11

Implementation methods

1. The Community budget allocated to the Fund shall be implemented in accordance with Article 53(1)(b) of the Financial Regulation, with the exception of the Community actions referred to in Article 6 and the technical assistance referred to in Article 16 of this Decision.

2. The Commission shall exercise its responsibility for implementing the general budget of the European Union by:

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

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

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 are involved in the implementation of the multiannual programme or which, according to the Member State concerned, are able to make a useful contribution to its development.

Such authorities and bodies may include the competent regional, local, urban and other public authorities, international organisations, in particular UNHCR, and bodies representing civil society, such as non-governmental organisations or social partners.

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

CHAPTER III

FINANCIAL FRAMEWORK

Article 13

Global resources

1. The financial envelope for the implementation of this Decision from 1 January 2008 to 31 December 2013 shall be EUR 676 million.

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

3. The Commission shall make indicative annual breakdowns by Member States in accordance with the criteria established in Article 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 raised to EUR 500 000 per annum for the period 2008 to 2013 for those Member States which acceded to the European Union on 1 May 2004.

This amount shall be raised to EUR 500 000 per annum for those Member States which accede to the European Union during the period from 2007 to 2013 for the remaining part of the period 2008 to 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) 50 % in proportion to the total number of third-country nationals who do not or no longer fulfil the conditions for entry and stay in the territory of the Member State and who are subject to a return decision under national and/or Community law, i.e. an administrative or judicial decision or act, stating or declaring the illegality of stay and imposing an obligation to return, over the previous three years;

(b) 50 % 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, being present in a transit zone of a Member State, were refused entry;

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(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 ([1]).

4. The reference figures shall be the latest statistics produced by the Commission (Eurostat) on the basis of data provided by Member States in accordance with Community law.

Where Member States have not supplied the Commission (Eurostat) with the statistics concerned, they shall provide provisional data as soon as possible.

Before accepting these data as reference figures, the Commission (Eurostat) shall evaluate the quality, comparability and completeness of the statistical information in accordance with normal operational procedures. At the request of the Commission (Eurostat), Member States shall provide it with all the necessary information to do so.

Article 15

Financing structure

1. Financial contributions under the Fund shall take the form of grants.

2. Actions supported by the Fund shall be co-financed by public or private sources, shall be of a non-profit nature and shall not be eligible for funding from other sources covered by the general budget of the European Union.

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

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4. The Union 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 75 % for projects addressing specific priorities identified in the strategic guidelines referred to in Article 18.

The Union contribution shall be increased to 75 % in the Member States covered by the Cohesion Fund.

The Union contribution may be increased by 20 percentage points in a Member State provided that it meets one of the following conditions at the time of submission of its draft annual programme in accordance with Article 21(3) of this Decision or of its draft revised annual programme in accordance with Article 23 of Commission Decision 2008/458/EC ([2]):

(a) medium-term financial assistance is made available to it in accordance with Council Regulation (EC) No 332/2002 ([3]);

([1]) OJ L 50, 25.2.2003, p. 1.
([2]) OJ L 167, 27.6.2008, p. 135.
([3]) OJ L 53, 23.2.2002, p. 1.

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(b) financial assistance is made available to it in accordance with Council Regulation (EU) No 407/2010 ([1]) or financial assistance is made available to it by other euro-area Member States before 13 May 2010; or

(c) financial assistance is made available to it in accordance with the intergovernmental agreement establishing the European Financial Stability Facility or the Treaty establishing the European Stability Mechanism.

The Member State concerned shall submit a written statement to the Commission together with its draft annual programme or draft revised annual programme confirming that it meets one of the conditions referred to in point (a), (b) or (c) of the fourth subparagraph.

A project co-financed at the increased rate may remain so whether or not one of the conditions referred to in point (a), (b) or (c) of the fourth subparagraph is still met in the course of the implementation of the related annual programme.

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5. Within the framework of the implementation of national programming as set out in Chapter IV, Member States shall select projects for financing on the basis of the following minimum criteria:

(a) the situation and requirements in the Member State concerned;

(b) the cost-effectiveness of the expenditure, inter alia in view of the number of persons concerned by the project;

(c) the experience, expertise, reliability and financial contribution of the organisation applying for funding and any partner organisation;

(d) the extent to which the project complements other actions funded by the general budget of the European Union or as part of national programmes.

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

Article 16

Technical assistance at the initiative of the Commission

1. At the initiative of and/or on behalf of the Commission, subject to a ceiling of EUR 500 000 of the Fund's annual allocation, the Fund may finance preparatory measures, monitoring, administrative and technical support measures, as well as evaluation, audit and inspection measures necessary for implementing this Decision.

2. Those measures shall include:

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

(b) information measures for the Member States, the final beneficiaries and the general public, including awareness-raising campaigns and a common database of projects financed under the Fund;

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

([1]) OJ L 118, 12.5.2010, p. 1..

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(d) the design of a common framework for evaluation and monitoring as well as a systems of indicators, taking into account, where appropriate, national indicators;

(e) improvements in evaluation methods and the exchange of information on practices in this field;

(f) information and training measures for the authorities designated by Member States in accordance with Article 25, complementary to the efforts of the Member States to provide guidance to their authorities in accordance with Article 31(2).

Article 17

Technical assistance at the initiative of Member States

1. At the initiative of a Member State, for each annual programme, the Fund may finance preparatory measures, management, monitoring, evaluation, information and control measures, as well as measures for the reinforcement of the administrative capacity for the implementation of the Fund.

2. The amount set aside for technical assistance under each annual programme may not exceed:

(a) for the period 2008 to 2010, 7 % of the total annual amount of cofinancing allocated to that Member State plus EUR 30 000; and

(b) for the period 2011 to 2013, 4 % of the total annual amount of cofinancing allocated to that Member State plus EUR 30 000.

CHAPTER IV

PROGRAMMING

Article 18

Adoption of strategic guidelines

1. The Commission shall adopt strategic guidelines setting out a framework for the intervention of the Fund, taking into account 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(1)(a) and (b), those guidelines shall, in particular, give effect to the priorities of the Community with a view to promoting:

(a) the return of third-country nationals who are not in the possession of passports or other identity documents;

(b) the return of third-country nationals not covered under Community re-admission agreements or national bilateral re-admission agreements, with a view to strengthening the obligation of a State under international law to re-admit its own nationals;

(c) the return to a particular country of third-country nationals and stateless persons who have come from or have resided in that country but not as nationals of that country;

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(d) the return of persons who are under no obligation to leave the territory of the Member States, such as applicants for asylum who have not yet received a negative decision and persons enjoying a form of international protection within the meaning of Directive 2004/83/EC or temporary protection within the meaning of Directive 2001/55/EC;

(e) the return of particularly vulnerable groups.

For the objective of the Fund referred to in Article 3(1)(c), those guidelines shall, in particular, give effect to the priorities of the Community to promote the knowledge of the common standards across the European Union and the integration of those standards into daily return management processes in the administrative authorities of the Member States.

3. The Commission shall adopt the strategic guidelines relating to the multiannual programming period by 31 July 2007.

4. The strategic guidelines shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 52(3). These strategic guidelines, once adopted, shall be annexed to this Decision.

Article 19

Preparation and approval of national multiannual programmes

1. Each Member State shall propose, on the basis of the strategic guidelines referred to in Article 18, a draft multiannual programme which shall consist of 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, with disaggregated data, insofar as they are available, between voluntary and forced returns, the approach towards reintegration measures and sustainability of return, capacity building of competent administrative and judicial authorities and the cooperation with other Member States in relation to the above;

(b) an 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 in relation to the above and an indication of the operational objectives designed to meet those requirements during the period covered by the multiannual programme;

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

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

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(e) information on the priorities and their specific targets. Those targets shall be quantified using a limited number of indicators for 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 description of the approach chosen for the implementation of the partnership principle laid down in Article 12;

(g) a draft financing plan which sets out, for each priority and each annual programme, the Fund's proposed financial contribution and the overall amount of public or private cofinancing;

(h) the provisions laid down to ensure that the multiannual programme is made public.

2. Member States shall submit their draft multiannual programme to the Commission no later than four months after the Commission has provided the strategic guidelines.

3. In order to approve the draft multiannual programme, the Commission shall examine:

(a) the draft multiannual programme's consistency with the objectives of the Fund and the strategic guidelines referred to in Article 18;

(b) the relevance of the actions envisaged in the draft multiannual programme in the light of the strategy which is proposed;

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

(d) the draft multiannual programme's compliance with Community law and, in particular, with Community law aiming at ensuring the free movement of persons in conjunction with the directly related accompanying measures with respect to external border controls, asylum and immigration.

4. Where the Commission considers that a draft multiannual programme is inconsistent with the strategic guidelines and/or does not comply with the provisions of this Decision setting out management and control systems or with Community law, it shall invite the Member State concerned to provide all necessary additional information and, where appropriate, to revise the draft multiannual programme accordingly.

5. The Commission shall approve each multiannual programme within three months of 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, 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 Community priorities. Multiannual programmes may be re-examined in the light of evaluations and/or following implementation difficulties.

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2. The Commission shall adopt a decision approving the revision of the multiannual programme as soon as possible after the formal submission of a request to that effect by the Member State concerned. The revision of the multiannual programme shall be carried out in accordance with the procedure referred to in Article 52(2).

Article 21

Annual programmes

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

2. The Commission shall provide the Member States, by 1 July of each year, with an estimate of the amounts to be allocated to them for the following year from the total appropriations allocated under the annual budgetary procedure, calculated as provided for by Article 14.

3. Member States shall submit to the Commission by 1 November of each year, a draft annual programme for the following year, established in accordance with the multiannual programme and consisting of the following elements:

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

(b) a description of the actions to be supported under the annual programme;

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

4. By way of derogation from paragraph 3, Member States shall submit the draft annual programmes for 2008 to the Commission by 1 March 2008.

5. When examining the draft annual programme of a Member State, the Commission shall take account of the final amount of the appropriations allocated to the Fund under the budgetary procedure.

Within one month of the formal submission of the draft annual programme, the Commission shall inform the Member State concerned whether it can be approved. If the draft annual programme is inconsistent with the multiannual programme, the Commission shall invite that Member State to provide all necessary information and, where appropriate, to revise the draft annual programme accordingly.

The Commission shall adopt the financing decision approving the annual programme by 1 March of the year in question. The decision shall indicate the amount allocated to the Member State concerned and the period for which the expenditure is eligible.

6. To take into account duly substantiated emergency situations which were not foreseen at the time of the approval of the annual programme and which require urgent action, a Member State may revise up to 10 % of the financial breakdown of the contribution from the Fund between the various actions listed in the annual programme or allocate up to 10 % of the breakdown to other actions in accordance with this Decision. The Member State concerned shall inform the Commission of the revised annual programme.

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Article 22

Mid-term review of the multiannual programme

1. The Commission shall review the strategic guidelines and, where necessary, adopt, by 31 March 2010, revised strategic guidelines for the period 2011 to 2013.

2. If such revised strategic guidelines are adopted, each Member State shall re-examine its multiannual programme and, where appropriate, revise it.

3. The rules laid down in Article 19 on the preparation and approval of national multiannual programmes shall apply mutatis mutandis to the preparation and approval of these revised multiannual programmes.

4. The revised strategic guidelines shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 52(3).

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 of management and control systems

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

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

(b) respect for the principle of separation of functions between and within such bodies;

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

(d) procedures for ensuring the correctness and regularity of the expenditure declared under the annual programmes;

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

(f) a system of reporting and monitoring where the responsible body entrusts the performance of tasks to another body;

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

(h) arrangements for auditing the functioning of the system;

(i) systems and procedures to ensure an adequate audit trail;

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

Article 25

Designation of authorities

1. For the implementation of its multiannual programme and annual programmes the Member State shall designate the following:

(a) a responsible authority: a functional body of the Member State, national public authority or body designated by the Member State or a body which is governed by the private law of the Member State and has a public service mission, which shall be responsible for the management of the multiannual programme and annual programmes supported by the Fund and shall handle all communication with the Commission;

(b) a certifying authority: a national public authority or body, or individual acting as such a body or authority, designated by the Member State to certify declarations of expenditure before they are sent to the Commission;

(c) an audit authority: a national public authority or body, provided that it is functionally independent of the responsible authority and the certifying authority, designated by the Member State and responsible for verifying the effective functioning of the management and control system;

(d) where appropriate, a delegated authority.

2. The Member State shall lay down rules governing its relations with the authorities referred to in paragraph 1 and their relations with the Commission.

3. Subject to Article 24(b), some or all of the authorities referred to in paragraph 1 of this Article may be located within the same body.

4. The rules for implementing Articles 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 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 for administrative work in an international environment.

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2. The Member State shall provide the responsible authority with adequate funding so that it can continue to carry out its tasks properly throughout the period 2008 to 2013.

3. The Commission may assist the Member States in the training of staff, in particular as regards the correct application of Chapters V to IX.

Article 27

Tasks of the responsible authority

1. The responsible authority shall be responsible for managing and implementing the multiannual programme in accordance with the principle of sound financial management.

It shall in particular:

(a) consult partners in accordance with Article 12;

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

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

(d) organise the selection of projects for co-financing under the Fund in accordance with the criteria set out in Article 15(5);

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

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

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

(h) ensure that there is a system for recording and storing in computerised form accounting records of each action under the annual programmes and that the data on implementation necessary for financial management, monitoring, control and evaluation are collected;

(i) ensure that final beneficiaries and other bodies involved in the implementation of actions co-financed by the Fund maintain either a separate accounting system or an adequate accounting code for all transactions relating to the action without prejudice to national accounting rules;

(j) ensure that the evaluations of the Fund referred to in Article 49 are carried out within the time limits laid down Article 50(2) 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;

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

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

(n) draw up and submit to the Commission progress and final reports on the implementation of the annual programmes, declarations of expenditure certified by the certifying authority and requests for payment or, where appropriate, statements of reimbursement;

(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;

(q) verify the implementation by the final beneficiaries of the guidelines referred to in Article 33(6).

2. The responsible authority's management activities for projects implemented in the Member States may be financed under the technical assistance arrangements referred to in Article 16.

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 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 shall:

(a) certify that:

(i) the declaration of expenditure is accurate, results from reliable accounting systems and is based on verifiable supporting documents,

(ii) the expenditure declared complies with applicable Community and national rules and has been incurred in respect of actions selected in accordance with the criteria applicable to the programme and complying with Community and national rules;

(b) ensure for the purposes of certification that it has received adequate information from the responsible authority on the procedures and verifications carried out in relation to expenditure included in declarations of expenditure;

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(c) take account for the purposes of certification of the results of all audits carried out by or under the responsibility of the audit authority;

(d) maintain accounting records in computerised form of expenditure declared to the Commission;

(e) verify the recovery of any Community financing found to have been unduly paid as a result of irregularities detected, together with interest where appropriate;

(f) keep an account of amounts recoverable and amounts recovered under the general budget of the European Union, where possible by deducting them from the next declaration of expenditure.

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

Article 30

Audit authority

1. The audit authority shall:

(a) ensure that audits are carried out to verify the effective functioning of the management and control system;

(b) ensure that audits are carried out of actions on the basis of an appropriate sample to verify expenditure declared; the sample shall represent at least 10 % of the total eligible expenditure for each annual programme;

(c) present to the Commission within six months of the approval of the multiannual programme an audit strategy covering the bodies which will perform the audits referred to under points (a) and (b), ensuring that the main beneficiaries of 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 Decision No 573/2007/EC, Decision No 574/2007/EC and Decision No …/2007/EC, or where common systems apply to two or more of these Funds, a single combined audit strategy may be submitted under paragraph 1(c).

3. For each annual programme, the audit authority shall draft a report which shall comprise:

(a) an annual audit report setting out the findings of the audits carried out in accordance with the audit strategy in respect of the annual programme and reporting any shortcomings found in the systems for the management and control of the programme;

(b) an opinion, on the basis of the controls and audits that have been carried out under the responsibility of the audit authority, as to whether the functioning of the management and control system provides reasonable assurance that declarations of expenditure presented to the Commission are correct and that the underlying transactions are legal and regular;

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(c) a declaration assessing the validity of the request for payment or statement of reimbursement of the final balance and the legality and regularity of the expenditure concerned.

4. The audit authority shall ensure that the audit work takes account of internationally accepted audit standards.

5. The audit relating to projects implemented in the Member States may be financed under the technical assistance arrangements referred to in Article 17, provided that the prerogatives of the audit authority as described in Article 24 are respected.

CHAPTER VI

RESPONSIBIILTIES AND 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. Member States shall ensure that responsible authorities and any delegated authority, certifying authorities, audit authorities and any other bodies concerned receive adequate guidance on setting up the management and control systems referred to in Articles 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 final beneficiary cannot be recovered, the Member State concerned shall be responsible for reimbursing the amounts lost to the general budget of the European Union when it is established that the loss has been incurred as a result of its fault or negligence.

4. Member States shall be primarily responsible for the financial control of actions and shall ensure that management and control systems and audits are implemented in such a way as to guarantee that Community funds are used properly and effectively. They shall provide the Commission with a description of these systems.

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

Article 32

Management and control systems

1. Before the Commission approves the multiannual programme, in accordance with the procedure referred to in Article 52(2), the Member States shall ensure that management and control systems have been set up in accordance with Articles 24 to 30. They shall be responsible for ensuring that the systems function effectively throughout the programming period.

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2. Member States shall submit to the Commission, together with their 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. The Commission shall review the application of this provision in the context of the preparation of the report for the period 2008 to 2010 referred to in Article 50(3).

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 programming period.

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

4. The Commission shall, in cooperation with the Member States, ensure that appropriate information, publicity and follow-up are provided for actions supported by the Fund.

5. The Commission shall, in cooperation with the Member States, ensure that actions are consistent with, and complementary to, other relevant Community policies, instruments and initiatives.

6. The Commission shall lay down guidelines to ensure the visibility of the funding granted under this Decision.

Article 34

Cooperation with the audit authorities of the Member States

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

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The Commission shall provide its comments on the audit strategy presented under Article 30 within not more than three months of its receipt.

2. In determining its own audit strategy, the Commission shall identify those annual programmes which it considers satisfactory on the basis of its existing knowledge of the management and control systems.

For those programmes, the Commission may conclude that it can rely principally on the audit evidence provided by the Member States and that it will carry out its own on-the-spot checks only if there is evidence to suggest shortcomings in the systems.

CHAPTER VII

FINANCIAL MANAGEMENT

Article 35

Eligibility — declarations of expenditure

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

2. Expenditure shall correspond to the payments effected by the final beneficiaries. It shall be justified by receipted invoices or accounting documents of equivalent evidential value.

3. Expenditure may be considered eligible for support from the Fund only if it is actually paid no earlier than 1 January of the year referred to in the financing decision approving the annual programme referred to in the third subparagraph of Article 21(5). The co-financed actions must not have been completed before the starting date for eligibility.

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

Article 36

Completeness of payment to final beneficiaries

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

Article 37

Use of the euro

1. Amounts set out in the draft multiannual and annual programmes of the Member States referred to in Articles 19 and 21 respectively, certified declarations of expenditure, requests for payments referred to in Article 27(1)(n) and expenditure mentioned in the progress report on the

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implementation of the annual programme referred to in Article 39(4) and the final report on the implementation of the annual programme referred to in Article 51 shall be denominated in euros.

2. Commission financing decisions approving the annual programmes of Member States referred to in the third subparagraph of Article 21(5), Commission commitments and Commission payments shall be denominated and carried out in euros.

3. Member States which have not adopted the euro as their currency on the date of the request for payment shall convert into euros the amounts of expenditure incurred in national currency. This amount shall be converted into euros using the monthly accounting exchange rate of the Commission for the month during which the expenditure was entered in the accounts of the responsible authority of the programme concerned. This rate shall be published electronically by the Commission each month.

4. When the euro becomes the currency of a Member State, the conversion procedure set out in paragraph 3 shall continue to apply to all expenditure recorded in the accounts by the certifying authority before the date of entry into force of the fixed conversion rate between the national currency and the euro.

Article 38

Commitments

Community budgetary commitments shall be made annually on the basis of the Commission financing decision approving the annual programme referred to in the third subparagraph of Article 21(5).

Article 39

Payments — Prefinancing

1. Payments by the Commission of the contribution from the Fund shall be made in accordance with the budget commitments.

2. Payments shall take the form of pre-financing and payment of the balance. They shall be made to the responsible authority designated by the Member State.

3. A first pre-financing payment representing 50 % of the amount allocated in the financing decision approving the annual programme shall be made to the Member State within sixty days following the adoption of that decision.

4. A second pre-financing payment shall be made no more than three months after the Commission has approved, within two months of the formal submission of a request for payment by a Member State, a progress report on the implementation of the annual programme and a certified declaration of expenditure drawn up in accordance with Article 29(1)(a), and Article 35 accounting for at least 60 % of the amount of the initial payment.

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The amount of the second pre-financing payment made by the Commission shall not exceed 50 % of the total amount allocated by the financing decision approving the annual programme and, in any event, where a Member State has committed nationally an amount less than the amount indicated in the financing decision approving the annual programme, the balance of the amount of Community funds actually committed by the Member State for selected projects under the annual programme minus the first pre-financing payment.

5. Any interest generated by pre-financing payments shall be posted to the annual programme concerned, being regarded as a resource for the Member State as national public contribution and shall be declared to the Commission at the time of the declaration of expenditure relating to the final report on the implementation of the annual programme concerned.

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

Article 40

Payment of balance

1. The Commission shall pay the balance provided it has received the following documents no later than nine months after the eligibility deadline for expenditure laid down in the financing decision approving the annual programme:

(a) a certified declaration of expenditure, duly drawn up in accordance with Article 29(1)(a) and Article 35, and a request for payment of the balance or statement of reimbursement;

(b) the final report on the implementation of the annual programme as set out in Article 51;

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

The payment of the balance shall be subject to the acceptance of the final report on the implementation of the annual programme and of the declaration assessing the validity of the request for payment of the balance.

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

3. The automatic cancellation procedure defined in paragraph 2 shall be suspended, for the amount of the projects concerned, where legal proceedings or administrative appeals having suspensive effects are under way at Member State level when the documents defined in paragraph 1 are submitted. The Member State shall, in the final report submitted, give detailed information on such projects, and send reports on progress made with regard to these projects every six months. Within three months of the conclusion of the legal proceedings or administrative appeal procedure, the Member State shall present the documents required in paragraph 1 for the projects concerned.

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4. The nine-month period referred to in paragraph 1 shall cease to run if the Commission adopts a decision suspending payments of the co-financing for the relevant annual programme in accordance with 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 Article 41, the Commission shall, within six months of receiving the documents referred to in paragraph 1 of this Article, inform the Member State of the amount of expenditure recognised by the Commission as chargeable to the Fund, and of any financial corrections deriving from the difference between declared expenditure and the expenditure recognised. The Member State shall have three months to present its comments.

6. Within three months of receiving the Member State's comments, the Commission shall decide on the amount of expenditure recognised as chargeable to the Fund, and recover the balance arising from the difference between final recognised expenditure and the sums already paid to that Member State.

7. Subject to available funding, the Commission shall pay the balance within no more than sixty days from the date on which it accepts the documents referred to in paragraph 1. The balance of the budgetary commitment shall be decommitted within six months following the payment.

Article 41

Withholding of payments

1. The payment shall be withheld by the authorising officer by delegation within the meaning of the Financial Regulation for a maximum period of six months if:

(a) in a report of a national or Community audit body there is evidence to suggest a significant deficiency in the functioning of the management and control systems;

(b) that officer has to carry out additional verifications following information coming to his notice which alerted him that expenditure in a certified declaration of expenditure is linked to a serious irregularity which has not been corrected.

2. The Member State and the responsible authority shall be informed immediately of the reasons for the payment being withheld. The payment shall be withheld until the necessary measures are taken by the Member State.

Article 42

Suspension of payments

1. All or part of the pre-financing and payments of the balance may be suspended by the Commission when:

(a) there is a serious deficiency in the management and control system of the programme which affects the reliability of the procedure for certification of payments and for which corrective measures have not been taken; or

(b) expenditure in a certified declaration of expenditure is linked to a serious irregularity which has not been corrected; or

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(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 payments of the balance after having given the Member State the opportunity to present its observations within a period of three months.

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

4. If the necessary measures are not taken by the Member State, the Commission may adopt a decision to cancel all or part of the Community contribution to the annual programme in accordance with Article 46.

Article 43

Conservation of documents

Without prejudice to the rules governing State aid under Article 87 of the Treaty, the responsible authority shall ensure that all the supporting documents regarding expenditure and audits on the programmes concerned are kept available for the Commission and the Court of Auditors for a period of five years following the closure of the programmes in accordance with Article 40(1).

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

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

CHAPTER VIII

FINANCIAL CORRECTIONS

Article 44

Financial corrections by Member States

1. Member States shall, in the first instance, bear the responsibility for investigating irregularities, acting upon evidence of any major change affecting the nature or the conditions for the implementation or control of programmes and making the required financial corrections.

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

Corrections made by Member States shall consist in cancelling, and if applicable, recovering all or part of the Community contribution. Where the amount is not repaid in the time allowed by the relevant Member State, default interest shall be due at the rate provided for in Article 47(2). Member States shall take into account the nature and gravity of the irregularities and the financial loss to the Fund.

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

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4. Member States shall include in the final report on the implementation of the annual programme referred to in Article 51 a list of cancellation procedures initiated for the annual programme concerned.

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 actions financed by the Fund and on management and control systems with a minimum of three working days' notice. The Commission shall give notice to the Member State concerned with a view to obtaining all the assistance necessary. Officials or authorised representatives of the Member State concerned may take part in such checks.

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

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

Article 46

Criteria for the corrections

1. The Commission may make financial corrections by cancelling all or part of the Community contribution to an annual programme where, after carrying out the necessary examination, it concludes that:

(a) there is a serious deficiency in the management and control system of the programme which has put at risk the Community contribution already paid to the programme;

(b) expenditure contained in a certified declaration of expenditure is irregular and has not been corrected by the Member State prior to the opening of the correction procedure under this paragraph;

(c) a Member State has not complied with its obligations under Article 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 irregularity relates to a declaration of expenditure for which a reasonable assurance had previously been given by the audit authority in accordance with

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Article 30(3)(b), there will be a presumption of a systemic problem giving rise to the application of a flat-rate or extrapolated correction, unless the Member State can provide proof within three months to rebut this presumption.

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

4. Where the Commission bases its position on the facts established by auditors other than those of its own services, it shall draw its own conclusions regarding the financial consequences, after examining the measures taken by the Member State concerned under Article 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 general budget of the European Union shall be effected before the due date indicated in the order for recovery drawn up in accordance with Article 72 of the Financial Regulation. This due date shall be the last day of the second month following the issuing of the order.

2. Any delay in effecting repayment shall give rise to interest on account of late payment, starting on the due date and ending on the date of actual payment. The rate of such interest shall be the rate applied by the European Central Bank to its principal refinancing operations, as published in the C series of the *Official Journal of the European Union*, in force on the first calendar day of the month in which the due date falls, increased by three and a half percentage points.

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 44.

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 by the Commission in partnership with the Member States to assess the relevance, effectiveness and impact of actions in the light of the general objective referred to in Article 2 in the context of the preparation for the reports set out in Article 50(3).

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

Article 50

Reporting obligations

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

To that end, the agreements and contracts it concludes with the organisations responsible for the implementation of the actions shall include clauses laying down an obligation to submit regular and detailed reports on the progress of implementation and completion of the assigned objectives, which shall be the basis for, respectively, the progress and final reports on the implementation of the annual programme.

2. The Member States shall submit to the Commission:

(a) by 30 June 2010, an evaluation report on the implementation of actions co-financed by the Fund;

(b) by 30 June 2012 for the period 2008 to 2010 and by 30 June 2015 for the period 2011 to 2013 respectively, an evaluation report on the results and impact of actions co-financed by the Fund.

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

(a) by 30 June 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) by 31 December 2010, an intermediate report on the results achieved and on qualitative and quantitative aspects of implementation of the Fund, together with a proposal on the Fund's future development;

(c) by 31 December 2012 for the period 2008 to 2010 and by 31 December 2015 for the period 2011 to 2013 respectively, an ex-post evaluation report.

Article 51

Final report on the implementation of the annual programme

1. The final report on the implementation of the annual programme shall include the following information in order to obtain a clear view of the implementation of the programme:

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

(b) the progress made in implementing the multiannual programme and its priorities in relation to its specific, verifiable targets, with a quantification, wherever and whenever they lend themselves to quantification, of the indicators;

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

(i) monitoring and evaluation measures, including data collection arrangements,

(ii) a summary of any significant problems encountered in implementing the operational programme and any measures taken,

(iii) the use made of technical assistance;

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

2. The report shall be judged acceptable where it contains all the information listed in paragraph 1. The Commission shall reach a decision on the content of the report submitted by the responsible authority within two months of having received all the information referred to in paragraph 1, which shall be acknowledged to the Member States. If the Commission does not respond within the time limit laid down, the report shall be deemed to be accepted.

CHAPTER X

FINAL PROVISIONS

Article 52

Committee

1. The Commission shall be assisted by the common Committee 'Solidarity and Management of Migration flows', established by Decision No 574/2007/EC.

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. Where reference is made to this paragraph, Article 5a(1) to (4) and 5(b) and Article 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

The time-limits laid down in Article 5a(3)(c), (4)(b) and (4)(e) of Decision 1999/468/EC shall be set at six weeks.

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.

Article 54

Entry into force and application

This Decision shall enter into force on the day following its publication in the *Official Journal of the European Union*.

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This Decision shall apply from 1 January 2008, with the exception of Articles 14, 18, 19, 21, 22, 25, Article 31(2), Article 31(5), Article 32, Article 35(4) and Article 52, which shall apply from 7 June 2007.

Article 55

Addressees

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