COMMISSION IMPLEMENTING DECISION

of 20 September 2012

amending Decision 2008/458/EC laying down rules for the implementation of Decision No 575/2007/EC of the European Parliament and of the Council establishing the European Return Fund for the period 2008 to 2013 as part of the General programme 'Solidarity and Management of Migration Flows' as regards Member States' management and control systems, the rules for administrative and financial management and the eligibility of expenditure on projects co-financed by the Fund

(notified under document C(2012) 6408)

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

(2012/718/EU)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to 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' ([1]), and in particular Article 35(4) thereof,

Whereas:

(1) The general objective of the European Return Fund is to support the efforts made by the Member States to improve the management of return in all its dimensions taking into account Union legislation in this field and in full compliance with fundamental rights.

(2) In accordance with the specific objectives indicated in Article 3(1)(c) of Decision No 575/2007/EC, the Return Fund shall contribute to 'the promotion of an effective and uniform application of common standards on return in line with policy developments in this field'.

(3) In that context, the Return Fund provides support to Member States for the implementation of Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals ([2]) (the Return Directive) by co-financing a wide range of measures.

(4) In order to ensure the effective implementation of the Return Directive by Member States, it is appropriate to further reinforce the support of the Fund by extending the scope of eligible measures, in particular, to address the needs relating to Article 16 of the Return Directive requiring that detention take place as a rule in specialised detention facilities. Moreover, in the light of the experience gained since the launch of the European Return Fund and in order to reinforce the capacities of Member States to ensure effective transportation of returnees during return procedures and return operations, it is appropriate to give the possibilities under the Fund to finance necessary means of transport, such as buses.

(5) Considering that the 2011 and 2012 annual programmes of the Member States under the European Return Fund are still ongoing, it is appropriate that the modified rules apply from the 2011 annual programme onwards.

(6) 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 is bound by the basic act and, as a consequence, by this Decision.

(7) 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 is bound by the basic act and, as a consequence, by this Decision.

(8) In accordance with Article 2 of the Protocol on the position of Denmark, annexed to the Treaty on European Union and to the Treaty establishing the European Community, Denmark is not bound by this Decision or subject to the application thereof.

(9) The measures provided for in this Decision are in accordance with the opinion of the common Committee 'Solidarity and Management of Migration Flows' established by Decision No 574/2007/EC of the European Parliament and of the Council ([3]).

(10) Decision 2008/458/EC should therefore be amended accordingly,

HAS ADOPTED THIS DECISION:

Article 1

Annex XI to Decision 2008/458/EC is amended as follows:

(1) in point II.1.3.3, paragraph 3 is replaced by the following:

([1]) OJ L 144, 6.6.2007, p. 45.
([2]) OJ L 348, 24.12.2008, p. 98.
([3]) OJ L 144, 6.6.2007, p. 22.

'3. For individual items costing below EUR 20 000 the full purchase cost is eligible, provided, that, except in duly justified cases, the equipment is purchased before the last 3 months of the project. Individual items costing EUR 20 000 or more are only eligible on the basis of depreciation. By way of derogation from the above conditions, for means of transport costing below EUR 250 000 the full purchase cost is eligible.';

(2) point II.1.4.2 is replaced by the following:

'II.1.4.2. Purchase, construction or renovation

1. Where the acquisition of real estate is essential for implementation of the project and is clearly linked with its objectives, the purchase of real estate, i.e. buildings already constructed, or construction of real estate, is eligible for co-financing on the basis of the full or partial cost, or on the basis of depreciation, under the conditions set out below, without prejudice to the application of stricter national rules:

(a) a certificate is obtained from an independent qualified valuer or duly authorised official body establishing that the price does not exceed the market value, either attesting that the real estate is in conformity with national regulations or specifying the points which are not in conformity that the final beneficiary plans to rectify as part of the project;

(b) the real estate has not been purchased through a Community grant at any time prior to the implementation of the project;

(c) the real estate is to be used solely for the purpose stated in the project for a period of at least 10 years after the end date of the project unless the Commission specifically authorises otherwise in the case of co-financing of the full or partial costs; in the case of co-financing on the basis of depreciation this period is reduced to 5 years;

(d) the purchase of the real estate respects the principles of value for money and cost-effectiveness and is being considered as proportionate to the aim to be achieved through the implementation of the project;

(e) in the case of co-financing on the basis of depreciation, only the portion of the depreciation of these assets corresponding to the duration of use for the project and the rate of actual use for the project is eligible; depreciation shall be calculated according to national accounting rules.

2. Expenses for renovation, refurbishment and modernisation of real estate are eligible for co-financing on the basis of the full or partial cost or on the basis of depreciation. In the case of renovation costs only conditions (c) and (e) in paragraph 1 apply.'

Article 2

1. Article 1 shall apply from the date of adoption of this Decision.

2. Member States may decide to apply the changes in respect of ongoing or future projects as from the 2011 annual programmes.

Article 3

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

Done at Brussels, 20 September 2012.

For the Commission

Cecilia MALMSTRÖM

Member of the Commission