

COUNCIL DECISION
of 2 December 2004
establishing the European Refugee Fund for the period 2005 to 2010
(2004/904/EC)

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament⁽¹⁾,

Having regard to the opinion of the European Economic and Social Committee⁽²⁾,

After consulting the Committee of the Regions,

Whereas:

(1) A common policy on asylum, including a Common European Asylum System, is a constituent part of the European Union's objective of progressively establishing an area of freedom, security and justice open to those who, forced by circumstances, legitimately seek protection in the European Union.

(2) Implementation of this policy should be based on solidarity between Member States and requires the existence of mechanisms to promote a balance of effort between Member States in receiving and bearing the consequences of receiving refugees and displaced persons. To that end, a European Refugee Fund was established for the period 2000 to 2004 by Decision 2000/596/EC⁽³⁾.

(3) It is necessary to establish a European Refugee Fund (the Fund) for the period 2005 to 2010 to ensure continued solidarity between Member States in the light of recently adopted Community legislation in the field of asylum, taking account of the experience acquired when implementing the first phase of the Fund for the period 2000 to 2004.

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

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

(6) It is in the interests of both Member States and the persons concerned that refugees and displaced persons who are allowed to stay in the territory of the Member States should be given the opportunity to provide for themselves by working in accordance with the provisions of the related Community instruments.

(7) Since measures supported by the Structural Funds and other Community measures in the field of education and vocational training are not in themselves sufficient to promote such integration, support should be given for special measures to enable refugees and displaced persons to benefit fully from the programmes which are organised.

(8) Practical support is needed to create or improve conditions enabling refugees and displaced persons to take an informed decision to leave the territory of the Member States and return home, should they so wish.

(9) Action involving bodies of two or more Member States and action of Community interest in this field should be eligible for support by the Fund, and exchanges between Member States should be encouraged with a view to identifying and promoting the most effective practices.

⁽¹⁾ Opinion delivered on 20 April 2004 (not yet published in the Official Journal).

⁽²⁾ OJ C 241, 28.9.2004, p. 27.

⁽³⁾ OJ L 252, 6.10.2000, p. 12.

- (10) A financial reserve should be established for the implementation of emergency measures to provide temporary protection in the event of a mass influx of refugees pursuant to Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof⁽¹⁾.
- (11) With a view to establishing financial solidarity in an effective and proportionate way and taking account of the experience acquired when the Fund was implemented between 2000 and 2004, the Commission's responsibilities and those of the Member States for the implementation and management of the Fund should be delineated. Member States should designate appropriate national authorities for that purpose, the duties of which should be set out.
- (12) The support provided by the Fund will be more efficient and better targeted if co-financing of eligible actions is based on two multiannual programmes and on an annual work programme drawn up by each Member State taking into account its situation and needs.
- (13) It is fair to allocate resources proportionately to the burden on each Member State by reason of its efforts in receiving refugees and displaced persons, including refugees enjoying international protection within the framework of national programmes.
- (14) 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⁽²⁾.
- (15) Efficient monitoring is one way of ensuring that the actions supported by the Fund are effective. The conditions governing monitoring should be determined.
- (16) Without prejudice to the Commission's responsibilities for financial control, cooperation between Member States and the Commission should be established in that regard.
- (17) Member States should provide sufficient guarantees as regards arrangements for implementation and quality of execution. The responsibility of Member States for pursuing and correcting irregularities and infringements, and the responsibility of the Commission where Member States do not comply with their obligations, should be specified.
- (18) The effectiveness and impact of actions supported by the Fund also depend on their evaluation. The responsibilities of Member States and the Commission in this regard, and arrangements to ensure the reliability of evaluation, should be clearly defined.
- (19) Actions should be evaluated with a view to a mid-term review and assessment of their impact, and the evaluation process should be incorporated into project-monitoring arrangements.
- (20) Since the objective of this Decision, namely to promote a balance of effort between Member States in receiving refugees and displaced persons, cannot be sufficiently achieved by the Member States and can therefore be better achieved at Community level, the Community may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Decision does not go beyond what is necessary to achieve this objective.
- (21) 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 its wish to take part in the adoption and application of this Decision.
- (22) 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 its wish to take part in the adoption and application of this Decision.
- (23) In accordance with Articles 1 and 2 of the Protocol on the position of Denmark, annexed to the Treaty on European Union and to the Treaty establishing the European Community, Denmark is not taking part in the adoption of this Decision and is not bound by it nor subject to its application,

⁽¹⁾ OJ L 212, 7.8.2001, p. 12.

⁽²⁾ OJ L 184, 17.7.1999, p. 23.

HAS ADOPTED THIS DECISION:

CHAPTER I

OBJECTIVES AND TASKS

Article 1

Establishment and objectives

1. This Decision establishes the European Refugee Fund (the Fund) for the period from 1 January 2005 to 31 December 2010.

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

Article 2

Financial provisions

1. The financial reference amount for the implementation of the Fund from 1 January 2005 to 31 December 2006 shall be EUR 114 million.

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

Article 3

Groups targeted by the actions

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

1. any third-country nationals or stateless persons having the status defined by the Geneva Convention of 28 July 1951 relating to the Status of Refugees and the 1967 protocol thereto and who are permitted to reside as refugees in one of the Member States;
2. any third-country nationals or stateless persons enjoying a form of subsidiary 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⁾;
3. any third-country nationals or stateless persons who have applied for one of the forms of protection described in points 1 and 2;

⁽¹⁾ OJ L 304, 30.9.2004, p. 12.

4. any third-country nationals or stateless persons enjoying temporary protection within the meaning of Directive 2001/55/EC.

Article 4

Actions

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

- (a) reception conditions and asylum procedures;
- (b) integration of persons referred to in Article 3 whose stay in the Member State is of a lasting and stable nature;
- (c) voluntary return of persons referred to in Article 3, provided they have not acquired a new nationality and have not left the territory of the Member State.

2. Actions provided for by paragraph 1 shall, in particular, promote the implementation of the provisions of the relevant existing and future Community legislation in the field of the common European asylum system.

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

Article 5

Eligible national actions relating to reception Conditions and asylum procedures

Actions relating to reception conditions and asylum procedures, and in particular the following, shall be eligible for support from the Fund:

- (a) accommodation infrastructure or services;
- (b) provision of material aid and medical or psychological care;
- (c) social assistance, information or help with administrative formalities;
- (d) legal aid and language assistance;
- (e) education, language training and other initiatives which are consistent with the status of the person;

- (f) the provision of support services such as translation and training to help improve reception conditions and the efficiency and quality of asylum procedures;
- (g) information for local communities who will be interacting with those being received in the host country.

Article 6

Eligible national actions relating to integration

Actions relating to integration into Member States' society of persons referred to in Article 4(1)(b) and members of their family, and in particular the following, shall be eligible for support from the Fund:

- (a) advice and assistance in areas such as housing, means of subsistence, integration into the labour market, medical, psychological and social care;
- (b) actions enabling recipients to adapt to the society of the Member State in socio-cultural terms, and to share the values enshrined in the Charter of Fundamental Rights of the European Union;
- (c) actions to promote durable and sustainable participation in civil and cultural life;
- (d) measures focusing on education, vocational training, recognition of qualifications and diplomas;
- (e) actions designed to promote self-empowerment and to enable these persons to provide for themselves;
- (f) actions that promote meaningful contact and constructive dialogue between these persons and the receiving society, including actions which promote the involvement of key partners such as the general public, local authorities, refugee associations, voluntary groups, social partners and the broader civil society;
- (g) measures to support the acquisition of skills by these persons, including language training;
- (h) actions that promote both equality of access and equality of outcomes in relation to these persons' dealings with public institutions.

Article 7

Eligible national actions relating to voluntary return

Actions relating to voluntary return, and in particular the following, shall be eligible for support from the Fund:

- (a) information and advisory services concerning voluntary return initiatives or programmes;
- (b) information on the situation in the country or region of origin or former habitual residence;
- (c) general or vocational training and help with reintegration;
- (d) action by communities of origin resident in the European Union to facilitate the voluntary return of the persons referred to in this Decision;
- (e) actions which facilitate the organisation and implementation of national voluntary return programmes.

Article 8

Community actions

1. In addition to the projects provided for by Articles 5, 6 and 7, 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 concerning asylum policy and measures applicable to refugees and displaced persons as referred to in paragraph 2.

2. Eligible Community actions essentially concern the following areas:

- (a) the furthering of Community cooperation in implementing Community law and good practices;
- (b) support for the setting-up of transnational cooperation networks and pilot projects based on transnational partnerships between bodies located in two or more Member States designed to stimulate innovation, facilitate exchanges of experience and good practice and improve the quality of asylum policy;
- (c) support for transnational awareness-raising campaigns on European asylum policy and the situation and circumstances of the persons referred to in Article 3;
- (d) support for dissemination and exchange of information, including the use of IT and communications technology, on best practices and all other aspects of the Fund.

3. The annual work programme laying down the priorities for Community actions shall be adopted in accordance with the procedure referred to in Article 11(2).

*Article 9***Emergency measures**

1. In the event of temporary protection mechanisms within the meaning of Directive 2001/55/EC being implemented, the Fund shall also finance measures to help the Member States, such measures being separate from, and in addition to, the actions referred to in Article 4.

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

- (a) reception and accommodation;
- (b) provision of means of subsistence, including food and clothing;
- (c) medical, psychological or other assistance;
- (d) staff and administration costs linked to the reception of persons concerned and implementation of measures;
- (e) logistical and transport costs.

CHAPTER II

IMPLEMENTATION AND MANAGEMENT PROVISIONS*Article 10***Implementation**

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

*Article 11***Committee procedure**

1. The Commission shall be assisted by a Committee.
2. Where reference is made to this paragraph, Articles 4 and 7 of Decision 1999/468/EC shall apply.

The period laid down in Article 4(3) of Decision 1999/468/EC shall be set at three months.
3. Where reference is made to this paragraph, Articles 3 and 7 of Decision 1999/468/EC shall apply.
4. The Committee shall adopt its rules of procedure.

*Article 12***Respective responsibilities of the Commission and the Member States**

1. The Commission shall:

- (a) adopt guidelines, in accordance with the procedure referred to in Article 11(2), for the priorities of the multiannual programmes provided for by Article 15 and shall notify the Member States of the indicative financial allocations for the Fund;
- (b) ensure, as part of its responsibility for executing the general budget of the European Union, that appropriate management and control systems are in place in the Member States and that they operate smoothly, so as to guarantee that Community funds are used properly and effectively. These measures shall include documentary and on-the-spot checks carried out on a prior basis on implementation procedures, control systems, accounting procedures and the procurement and grant allocation procedures followed by the responsible authorities. The Commission shall review procedures or systems whenever substantial changes are made;
- (c) implement the Community actions provided for by Article 8.

2. Member States shall:

- (a) be responsible for implementing national actions supported by the Fund;
- (b) take the measures needed for the effective operation of the Fund at national level, and involving all those concerned by asylum policy in accordance with national practice;
- (c) appoint a responsible authority to manage national projects supported by the Fund in accordance with the applicable Community legislation and the principle of sound financial management;
- (d) be responsible in the first instance for financial control of actions and ensure that management systems and checks 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;
- (e) certify that the declarations of expenditure submitted to the Commission are accurate and shall ensure that they result from accounting systems based on verifiable supporting documents;
- (f) cooperate with the Commission for the collection of the statistics needed for the implementation of Article 17.

3. In cooperation with the Member States, the Commission shall:

- (a) assume responsibility for disseminating the results of actions undertaken during the 2000 to 2004 phase of the Fund and of those to be implemented in the 2005 to 2010 phase;

- (b) ensure that appropriate information, publicity and follow-up are provided for actions supported by the Fund;
- (c) ensure that actions are cohesive with, and complementary to, other relevant Community policies, instruments and initiatives.

Article 13

Responsible authorities

1. Each Member State shall appoint a responsible authority which shall handle all communication with the Commission. The authority shall be a functional body of the Member State or a national public body. The responsible authority may delegate some or all of its implementation tasks to another public administration or a private-law body governed by the law of the Member State and which has a public-service mission. Where the Member State designates a responsible authority other than itself, it shall lay down all the arrangements governing its relations with the said authority and the latter's relations with the Commission.

2. The body designated as the responsible authority or any delegated authority shall meet the following minimum conditions:

- (a) it shall have legal personality, except where it is a functional body of the Member State;
 - (b) it shall have a financial and management capacity commensurate with the volume of Community funds which it will be called upon to manage and allowing it to carry out its tasks correctly, in accordance with the rules governing the management of Community funds.
3. The responsible authorities' tasks shall include the following:
- (a) consulting with appropriate partners to establish the multi-annual programme;
 - (b) organising and advertising calls for tenders and proposals;
 - (c) organising selection and award procedures for co-financing by the Fund in accordance with the principles of transparency and equal treatment, and taking all necessary measures to avoid any possible conflict of interests;
 - (d) ensuring consistency and complementarity between co-financing under the Fund and from other relevant national and Community financial instruments;
 - (e) administrative, contractual and financial management of actions;

- (f) information and advisory activities, as well as dissemination of results;
- (g) monitoring and evaluation;
- (h) cooperation and liaison with the Commission and the responsible authorities in the other Member States.

4. Member States shall provide the responsible authority or any delegated authority with adequate resources so that it can continue to carry out its tasks properly throughout the period of implementation of actions financed by the Fund. The implementation activities may be financed under the technical and administrative assistance arrangements referred to in Article 18.

5. Acting in accordance with the procedure referred to in Article 11(2), the Commission shall adopt rules concerning the Member States' management and control systems, including rules for the administrative and financial management of national projects co-financed by the Fund.

Article 14

Selection criteria

The responsible authority shall select projects on the basis of the following criteria:

- (a) the situation and requirements in the Member State;
- (b) the cost-effectiveness of the expenditure, 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 projects complement other action funded by the general budget of the European Union or as part of national programmes.

CHAPTER III

PROGRAMMES

Article 15

Multiannual programmes

1. Actions in the Member States shall be implemented on the basis of two multiannual programme phases, each lasting three years (2005 to 2007 and 2008 to 2010).

2. For each programme phase, on the basis of guidelines for the priorities of the multiannual programmes and indicative financial allocations provided by the Commission and provided for by Article 12(1)(a), each Member State shall propose a draft multiannual programme which includes the following elements:

- (a) a description of the current situation in the Member State as regards arrangements for reception, asylum procedures, integration and voluntary return of the persons covered by Article 3;
- (b) an analysis of requirements in the Member State in question in terms of reception, asylum procedures, integration and voluntary return and an indication of operational objectives designed to meet these requirements during the period covered by the programme;
- (c) presentation of an appropriate strategy to achieve these objectives and the priority attached to their attainment, taking account of the consultation of the partners provided for in Article 13(3)(a), and a brief description of the actions envisaged to implement the priorities;
- (d) an indication of whether this strategy is compatible with other regional, national and Community instruments;
- (e) an indicative financing plan which sets out, for each priority and each year, the Fund's proposed financial contribution and the overall amount of public or private co-financing.

3. Member States shall submit their draft multiannual programme no more than four months after the Commission has provided the guidelines and indicative financial allocations for the period in question.

4. Acting in accordance with the procedure referred to in Article 11(3), the Commission shall approve the draft multiannual programmes within three months of their receipt, in the light of the recommendations in the guidelines adopted pursuant to Article 12(1)(a).

Article 16

Annual programmes

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

2. No later than 1 July each year, the Commission shall provide Member States with an estimate of the amounts to be allocated to them for the following year from the total appropriations allocated under the annual budgetary procedure, calculated as provided by Article 17.

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

- (a) the general rules for selection of projects to be financed under the annual programme if these differ from the modalities laid down in the multiannual programme;
- (b) a description of the tasks to be carried out by the responsible authority when implementing the annual programme;
- (c) the proposed financial breakdown of the Fund's contribution between the programme's various actions and an indication of the amount requested to cover technical and administrative assistance under Article 18 for the purpose of implementing the annual programme.

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

5. In the event of significant changes affecting the implementation of the annual programme which imply a transfer of funds between actions exceeding 10 % of the total amount allocated to a Member State for the year in question, the Member State shall submit for the Commission's approval a revised annual programme at the latest at the time of submission of the progress report referred to in Article 23(3).

Article 17

Annual breakdown of resources for actions in the Member States provided for by Articles 5, 6 and 7

1. Each Member State shall receive a fixed amount of EUR 300 000 from the Fund's annual allocation. This amount shall be fixed at EUR 500 000 per annum for 2005, 2006 and 2007 in conformity with new financial perspectives for the states which acceded to the European Union on 1 May 2004.

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

- (a) 30 % in proportion to the number of persons admitted in one of the categories referred to in Article 3(1) and (2) over the previous three years;
- (b) 70 % in proportion to the number of persons referred to in Article 3(3) and (4) registered over the previous three years.

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

Article 18

Technical and administrative assistance

Part of the annual co-financing allocated to a Member State may be set aside to cover expenditure on technical and administrative assistance for preparation, monitoring and evaluation of actions.

The annual amount set aside for technical and administrative assistance may not exceed 7 % of the total annual co-financing allocated to a Member State, plus EUR 30 000.

Article 19

Special provisions concerning emergency measures

1. Member States shall provide the Commission with a statement of requirements and an implementation plan for the emergency measures provided for by Article 9, including a description of the planned measures and the bodies responsible for implementing them.

2. Financial assistance from the Fund for the emergency measures provided for by Article 9 shall be limited to a period of six months and shall not exceed 80 % of the cost of each measure.

3. Available resources shall be distributed among the Member States on the basis of the number of persons benefiting from temporary protection in each Member State as referred to in Article 9(1).

4. Articles 20(1) and (2), 21 and 23 to 26 shall apply.

CHAPTER IV

FINANCIAL MANAGEMENT AND SUPERVISION

Article 20

Financing structure

1. The Fund's financial participation shall take the form of non-refundable 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.

4. The Community contribution to supported projects shall not exceed:

(a) as regards actions implemented in the Member States under Articles 5, 6 and 7, 50 % of the total cost of a specific action. This may be increased to 60 % for particularly innovative actions, such as actions carried out by transnational partnerships or actions that involve the active participation of persons referred to in Article 3 or organisations established by these target groups, and shall be increased to 75 % in the Member States covered by the Cohesion Fund;

(b) as regards calls for proposals within the framework of Community actions under Article 8, 80 % of the total cost of a specific action.

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

Article 21

Eligibility

1. Expenditure shall correspond to the payments effected by the final grant recipients. It shall be justified by receipted invoices or accounting documents of equivalent status.

2. Expenditure may be considered eligible for support from the Fund only if it is actually paid no earlier than 1 January of the year referred to in the Commission decision on co-financing referred to in Article 16(4).

3. The Commission, acting in accordance with the procedure referred to in Article 11(3), shall adopt the rules governing eligibility of expenditure within the framework of actions implemented in the Member States under Articles 5, 6 and 7 and co-financed by the Fund.

Article 22

Commitments

Community budgetary commitments shall be made annually on the basis of the Commission decision on co-financing referred to in Article 16(4).

*Article 23***Payments**

1. The contribution from the Fund shall be paid by the Commission to the responsible authority in accordance with budgetary commitments.
2. A first pre-financing payment representing 50 % of the amount allocated in the Commission's annual decision on co-financing by the Fund shall be made to the Member State within 60 days following the adoption of the co-financing decision.
3. A second pre-financing payment shall be made no more than three months after the Commission has approved a progress report on implementation of the annual work programme and a declaration of expenditure accounting for at least 70 % of the amount of the initial payment. The amount of the second pre-financing payment made by the Commission shall not exceed 50 % of the total amount allocated by the co-financing decision or, in any event, the balance of the amount of Community funds actually committed by the Member State for selected projects under the annual programme minus the first pre-financing payment.
4. Payment of the balance shall be made no more than three months after the Commission has approved the annual programme's final implementation report and the final declaration of expenditure provided for by Articles 24(3) and 28(2); failing that, a request for reimbursement of amounts released under the first or second payments in excess of the final expenditure approved for the Fund shall be issued within that deadline.

*Article 24***Declarations of expenditure**

1. For all expenditure which it declares to the Commission, the responsible authority shall provide assurance that the national implementation programmes are managed in accordance with the Community regulations applicable and that the funds are used in accordance with the principle of sound financial management.
2. Declarations of expenditure shall be certified by an individual or department operationally independent of any authorising department of the responsible authority.
3. Within nine months of the deadline laid down in the co-financing decision whereby expenditure must be effected, the responsible authority shall forward a final declaration of expenditure to the Commission. Failing that, the Commission shall automatically terminate the annual programme and release the relevant appropriations.

*Article 25***Audit of accounts and financial corrections by the Member States**

1. Without prejudice to the Commission's responsibilities for implementing the general budget of the European Union, the Member States shall be take responsibility in the first instance for financial control of actions. To that end, the measures they take shall include:
 - (a) organising, on the basis of an appropriate sample, checks on actions covering at least 10 % of the total eligible expenditure for each annual implementing programme and on a representative sample of approved actions. Member States shall ensure an appropriate separation between checks and implementation or payment procedures concerning actions;
 - (b) preventing, detecting and correcting irregularities, notifying the Commission of them in accordance with the rules and keeping the Commission informed of the progress of administrative and judicial proceedings;
 - (c) cooperating with the Commission to ensure that Community funds are used in accordance with the principle of sound financial management.
2. Member States shall make the financial corrections required where an irregularity is ascertained, having regard to whether it is an individual or a systemic case. The corrections made by the Member State shall consist in cancelling all or part of the Community contribution, and, where the amount is not repaid in the time allowed by the relevant Member State, default interest shall be due at the rate provided for by Article 26(4).

3. Acting in accordance with the procedure referred to in Article 11(3), the Commission shall adopt the rules and procedures for financial corrections made by the Member States in connection with actions implemented in the Member States under Articles 5, 6 and 7 and co-financed by the Fund.

*Article 26***Audit of accounts and financial corrections by the Commission**

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

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

2. If, after completing the necessary verifications, the Commission concludes that a Member State is not complying with its obligations under Article 25, it shall suspend the pre-financing or final payment relating to co-financing from the Fund for the relevant annual programmes in cases where:

- (a) a Member State is not implementing the actions as agreed in the co-financing decision; or
- (b) all or part of an action justifies neither part nor the whole of the co-financing from the Fund; or
- (c) there are serious deficiencies in management and control systems that could give rise to systemic irregularities.

In those cases, the Commission shall, stating its reasons, request the Member State to submit its comments and, where appropriate, to carry out any corrections within a specified period of time.

3. At the end of the period set by the Commission, the Commission may, if no agreement has been reached and the Member State has not made the corrections, and taking account of any comments made by the Member State, decide within three months to:

- (a) reduce the pre-financing or final payments; or
- (b) make the financial corrections required by cancelling all or part of the contribution of the Fund to the actions in question.

In the absence of a decision pursuant to either (a) or (b), the payments shall immediately cease to be suspended.

4. Any sum received unduly or to be recovered shall be repaid to the Commission. If the amount owed has not been repaid by the deadline set by the Commission, it shall bear interest at the rate applied by the European Central Bank to its principal refinancing operations in euros, plus three and a half points. The reference rate to which the increase applies shall be the rate in force on the first day of the month of the final date for payment, as published in the C series of the *Official Journal of the European Union*.

5. The Commission, acting in accordance with the procedure referred to in Article 11(3), shall adopt rules and procedures for financial corrections made by the Commission in connection

with actions implemented in the Member States under Articles 5, 6 and 7 and co-financed by the Fund.

CHAPTER V

MONITORING, EVALUATION AND REPORTS

Article 27

Monitoring and evaluation

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

2. The Fund shall be evaluated regularly by the Commission in partnership with the Member States to assess the relevance, effectiveness and impact of actions in the light of the objectives referred to in Article 1. The Commission shall also look at complementarity between the actions implemented under the Fund and those pursued under other relevant Community policies, instruments and initiatives.

Article 28

Report

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 action implementation shall include clauses laying down an obligation to submit regular detailed progress reports on the implementation of these actions and a detailed final implementation report on the extent to which stated objectives have been achieved.

2. No more than nine months after the eligibility deadline for expenditure laid down in the co-financing decision for each annual programme, the responsible authority shall submit a final implementation report and a final declaration of expenditure to the Commission as provided for by Article 24(3).

3. Member States shall submit to the Commission:

(a) no later than 31 December 2006, an evaluation report on the implementation of actions co-financed by the Fund;

(b) no later than 30 June 2009 and 30 June 2012, an evaluation report on the results and impact of actions co-financed by the Fund.

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

- (a) no later than 30 April 2007, an intermediate report on the results achieved and on qualitative and quantitative aspects of implementation of the Fund, together with any proposed amendments;
- (b) no later than 31 December 2009, an intermediate evaluation report and a proposal on the Fund's future development;
- (c) no later than 31 December 2012, an *ex post* evaluation report.

CHAPTER VI

TRANSITIONAL PROVISIONS

Article 29

2005 to 2007 multiannual programme

By way of derogation from Article 15, the following timetable shall apply for implementation of the multiannual programme for the period 2005 to 2007:

- (a) no later than 31 January 2005, the Commission shall notify Member States of planning guidelines and shall provide an indication of the financial amounts allocated to them;
- (b) no later than 1 May 2005, Member States shall designate the national responsible authority referred to in Article 13 and shall submit the proposal for a multiannual programme for the period 2005 to 2007 referred to in Article 15;
- (c) acting in accordance with the procedure referred to in Article 11(3), the Commission shall approve the multi-annual programmes no more than two months after the proposal for a multiannual programme has been received.

Article 30

2005 annual programme

By way of derogation from Article 16, the following timetable shall apply for implementation in the financial year 2005:

- (a) by 31 January 2005, the Commission shall provide Member States with an estimate of the amounts allocated to them;
- (b) Member States shall present the proposal for an annual programme referred to in Article 16 to the Commission by 1 June 2005; the proposal shall be accompanied by details of the management systems and checks which will be implemented with a view to ensuring that Community funds are used properly and effectively;
- (c) the Commission shall adopt co-financing decisions no more than two months after the draft annual programme has been presented, following verification of the aspects indicated in Article 12(1)(b).

Expenditure actually disbursed between 1 January 2005 and that date on which the co-financing decisions are adopted may qualify for support from the Fund.

CHAPTER VII

FINAL PROVISIONS

Article 31

Review

The Council shall review this Decision on the basis of a proposal from the Commission by 31 December 2010.

Article 32

Addressees

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

Done at Brussels, 2 December 2004.

For the Council

The President

J. P. H. DONNER