
Changes to legislation: There are currently no known outstanding effects for the Commission Decision of 5 March 2008 laying down rules for the implementation of Decision No 574/2007/EC of the European Parliament and of the Council establishing the External Borders Fund for the period 2007 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 number C(2008) 789) (Only the Bulgarian, Czech, Danish, Dutch, English, Estonian, Finnish, French, German, Greek, Hungarian, Italian, Latvian, Lithuanian, Maltese, Polish, Portuguese, Romanian, Slovak, Slovenian, Spanish and Swedish texts are authentic) (2008/456/EC), CHAPTER 2. (See end of Document for details)

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PART II

PROVISIONS COMMON TO THE FOUR FUNDS

CHAPTER 2

Management and control systems

Article 6

Manual of procedures

In accordance with Article 33(2) of the basic act and having regard to the principle of proportionality, Member States shall establish a manual setting out procedures and practical arrangements regarding:

- (a) functioning of the designated authorities;
- (b) arrangements ensuring appropriate separation of functions;
- (c) where appropriate, monitoring of delegated authorities and other outsourced tasks;
- (d) establishment of multiannual and annual programmes;
- (e) establishment of audit strategy and annual audit plans;
- (f) selection of projects, award of grants and monitoring and financial management of the projects;
- (g) management of irregularities, financial corrections and recoveries;
- (h) preparation and implementation of audit missions;
- (i) preparation of audit reports and declarations;
- (j) certification of expenditure;
- (k) evaluation of the programme;
- (l) reporting to the Commission;

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Article 7

Implementation of the Fund by the responsible authority

1 For implementation of the Fund, the responsible authority may act as awarding body and/or as executing body.

2 The responsible authority acts as awarding body in cases where it implements the projects, as a general rule, on the basis of annual open calls for proposals.

Neither the responsible authority nor any delegated authority may apply in response to these calls for proposals.

In duly justified cases, including continuation of multiannual projects in accordance with Article 16(6) of the basic act which were selected after a previous call for proposals or in emergency situations, grants may be awarded without a call for proposals.

3 The responsible authority acts as executing body in cases where it decides to implement the projects directly because the characteristics of the projects leave no other choice for implementation, such as *de jure* monopoly situations or security reasons. In these cases, the rules concerning the final beneficiary shall apply *mutatis mutandis* to the responsible authority.

Article 8

Conditions under which the responsible authority acts as executing body

1 The reasons which led the responsible authority to act as executing body for implementation of projects shall be identified and communicated to the Commission within the framework of the annual programme concerned.

2 When implementing the projects, the responsible authority shall ensure the principle of value for money and prevent conflicts of interest.

3 The responsible authority may implement the projects identified in accordance with Article 7(3) directly and/or in association with any national authority competent on account of its technical expertise, its high degree of specialisation or its administrative powers. The main national authorities involved in implementation shall also be identified in the annual programme concerned.

4 The administrative decision to co-finance a project under the Fund shall contain the information necessary to monitor the co-financed products and services and to check the expenditure incurred. All relevant provisions laid down for a grant agreement in Article 10(2) shall be specified in an equivalent form of legal instrument.

5 The final report on implementation of the annual programme shall include information on the procedures and practices applied to ensure adequate separation of functions, effective control and satisfactory protection of the European Communities' financial interests and shall provide explanations on how conflicts of interest have been avoided.

6 When the responsible authority is expected to be executing body on a regular basis for projects co-financed by the Fund:

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Textual Amendments

- F1** Substituted by Commission Decision of 2 March 2011 amending Decision 2008/456/EC laying down rules for the implementation of Decision No 574/2007/EC of the European Parliament and of the Council establishing the External Borders Fund for the period 2007 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(2011) 1160) (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) (2011/148/EU).

Article 10

Grant agreements with final beneficiaries when the responsible authority acts as awarding body

1 The responsible authority shall lay down detailed project management procedures covering, *inter alia*:

- a signature of grant agreements with selected final beneficiaries;
- b follow-up of agreements and any amendment thereto by establishing a system for administrative monitoring of projects (exchange of correspondence, issuing and monitoring amendments and reminder letters, receipt and processing of reports, etc.).

2 The grant agreements shall lay down, *inter alia*:

- a the maximum amount of the grant;
- b the maximum percentage of the Community contribution in accordance with Article 16(4) of the basic act;
- c a detailed description and timetable of the project supported;
- d if applicable, the part of the tasks and related costs that the final beneficiary intends to subcontract to third parties;
- e the agreed forward budget and financing plan for the project, including the fixed percentage of indirect costs as defined in Annex XI regarding the rules on eligibility of expenditure;
- f the timetable and provisions for implementation of the agreement (reporting obligations, amendments and termination);
- g the operational objectives of the project and the indicators to be used;
- h the definition of eligible costs;
- i the conditions relating to payment of the grant and bookkeeping requirements;
- j the conditions relating to audit trail;
- k the relevant provisions relating to data protection;
- l the relevant provisions relating to publicity.

3 If appropriate, the final beneficiaries shall ensure that all partners in the project are subject to the same obligations as them. The partners shall engage their responsibility through the final beneficiary which remains answerable, in last resort, for the respect of the contractual conditions by itself and all partners in the project.

The final beneficiaries shall keep certified copies of the accounting documents justifying income and expenditure incurred by the partners in relation to the project concerned.

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4 The grant agreements shall provide expressly for the Commission and the Court of Auditors to exercise their powers of control, based on documents and on the premises, over all final beneficiaries, partners in the project and subcontractors.

[^{F1}Article 11

Implementation contracts

When awarding contracts for the implementation of the projects, the State, regional or local authorities, bodies governed by public law, associations formed by one or several of such authorities or several of such bodies governed by public law shall act in accordance with the applicable Union and national public procurement law and principles.

Entities other than those referred to in the first paragraph shall award contracts for the implementation of the projects following appropriate publicity in order to ensure compliance with the principles of transparency, non-discrimination and equal treatment. Contracts with a value of less than EUR 100 000 may be awarded provided the concerned entity requests at least three offers. Without prejudice to national rules, contracts with a value of less than EUR 5 000 shall not be subject to any procedural obligations.]

Textual Amendments

- F1** Substituted by Commission Decision of 2 March 2011 amending Decision 2008/456/EC laying down rules for the implementation of Decision No 574/2007/EC of the European Parliament and of the Council establishing the External Borders Fund for the period 2007 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(2011) 1160) (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) (2011/148/EU).

Article 12

Determination of the final Community contribution

For calculation of the final payment to the final beneficiary, the total Community contribution to each project shall be the lowest of the following three amounts:

- (a) the maximum amount stated in the grant agreement;
- (b) the maximum co-financing resulting from multiplication of the total eligible costs of the project concerned by the percentage laid down in Article 16(4) of the basic act (i.e. 50 % or 75 %); and
- (c) the amount resulting from application of the principle of non-profit, as defined in point I.3.3 of Annex XI.

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Article 13

Technical assistance

- 1 Technical assistance at the initiative of the Commission, as defined in Article 17 of the basic act, may be financed up to 100 % by the Fund.
- 2 Technical assistance at the initiative of the Member States, as defined in Article 18 of the basic act, may be financed up to 100 % by the Fund.
- 3 Technical assistance at the initiative of the Commission or the Member States may take the form of procurement contracts, expert fees and/or any administrative expenditure subject to the eligibility rules defined in Part III, Chapter 1.

Article 14

Technical assistance expenditure in the case of a common authority

- 1 When one or more designated authorities are common to two or more of the four Funds, the appropriations for the technical assistance expenditure on each of the annual programmes concerned may be merged, partly or entirely.
- 2 The expenditure on technical assistance shall be allocated between the Funds concerned, preferably on the basis of simple and representative apportionment formulae. Application of the formulae shall not lead to any increase in the maximum amount of technical assistance expenditure on each annual programme concerned.

Article 15

Verifications by the responsible authority

- 1 The verifications to be carried out by, or under the responsibility of, the responsible authority under Article 29(1)(g) of the basic act shall cover administrative, financial, technical and physical aspects of projects, as appropriate.

The verifications shall ensure that the expenditure declared is real and justified for the purpose of the project, that the projects granted have been delivered in accordance with the grant agreements, that the Community contribution complies with the rules, in particular regarding the financing structure defined in Article 16 of the basic act, that the applications for reimbursement by the final beneficiary are correct and that the projects and expenditure comply with Community and national rules and avoid double-financing of expenditure with other Community or national schemes and with other programming periods.

Moreover, the verifications shall include:

- a administrative and financial verifications of each application for reimbursement sent by the final beneficiaries;
- b verifications, at least on a representative sample of the supporting documents covering all headings of the budget annexed to the grant agreement, of the relevance, accuracy and eligibility of the expenses, income and costs covered by assigned income declared by the final beneficiaries;

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on the spot verifications of individual projects, at least on a sample representing an appropriate mix of types and sizes of projects and taking account of any risk factors already identified, in order to achieve reasonable assurance as to the legality and regularity of the underlying transactions, having regard to the level of risk identified by the responsible authority.

The verifications indicated in points (a) and (b) do not have to be carried out if an obligation is imposed on the final beneficiary to provide an audit certificate from an independent auditor which covers all the aspects mentioned in points (a) and (b).

2 Records shall be kept of each verification, stating the work performed, the date, the results and the measures taken in response to errors detected. The responsible authority shall ensure that all the supporting documents regarding the verifications performed are kept available for the Commission and the Court of Auditors for a period of five years following closure of the project. This period shall be interrupted in the event of legal proceedings or at the duly substantiated request of the Commission.

3 Where the responsible authority acts as executing body under the annual programme, as defined in Article 7(3), the verifications referred to in paragraph 1 shall be implemented in accordance with the principle of adequate separation of functions.

Article 16

Audit trail

1 For the purposes of Article 29(1)(k) of the basic act, an audit trail shall be considered adequate if it complies with the following criteria:

- a it permits reconciliation of the amounts certified to the Commission with the detailed accounting records and supporting documents held by the certifying authority, responsible authority, delegated authorities and final beneficiaries on projects co-financed under the Fund;
- b it permits verification of payment of the public contribution to the final beneficiary, of allocation and transfer of the Community funding granted under the Fund and of the sources of co-financing of the project;
- c it permits verification of application of the selection criteria established for the annual programme;
- d it contains in respect of each project, as appropriate, the technical specifications and financing plan, documents concerning grant approval, documents relating to public procurement procedures and reports on the verifications and audits carried out.

2 The responsible authority shall ensure that a record is kept of the location of all documents relating to specific payments made under the Fund.

Article 17

Audits of systems and audits of projects

1 The audits referred to in Article 32(1)(a) and (b) of the basic act shall be carried out on the management and control systems established by the Member States and on a sample of projects selected by a method approved by the audit authority.

The sampling method shall:

- a include an appropriate mix of types and sizes of projects;

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The sample shall also include projects implemented by the responsible authority acting as executing body at least on a proportional basis.

The method used to select the sample shall be documented.

2 The audit on the management and control systems shall cover each of the following processes at least once before 2013: programming, delegation of tasks, selection and award, monitoring of the projects, payment, certification of expenditure, reporting to the Commission, detection and treatment of potential irregularities and evaluation of the programmes.

3 The audits of projects shall be carried out on the spot on the basis of documentation and records held by the final beneficiary and/or the partners in the project. The audits shall verify that:

- a the project meets the selection criteria for the annual programme, has been implemented in accordance with the grant agreement and fulfils any applicable conditions concerning its functionality and use or the objectives to be attained;
- b the expenditure declared corresponds to the accounting records and supporting documents held by the final beneficiary and/or by the partners in the project, and those records correspond to the supporting documents kept by the responsible authority or any delegated body;
- c the items of expenditure correspond to the eligibility requirements set out in Annex XI, to the requirements specified during the national selection procedure, to the terms of the grant agreement and to the works actually carried out and, where appropriate, to other Community and national rules;
- d the use or intended use of the project is consistent with the objectives, action or measures set out in Articles 3, 4, 5, 6 and 18 of the basic act;
- e the public or private contribution has been paid to the final beneficiary in accordance with Article 16(2) of the basic act;
- f there is an adequate audit trail;
- g there are no conflicts of interest and good value for money has been achieved, in particular in cases where the responsible authority acts as executing body of the project.

4 Only expenditure within the scope of an audit carried out under paragraph 3 shall be counted towards the amount of expenditure audited for the purpose of Article 32(1)(b) of the basic act. If the audit is performed before the project has been closed, only the expenditure actually audited is taken into account to calculate the coverage rate.

5 Where problems detected appear to be systemic in nature and may therefore entail a risk to other projects, the audit authority shall ensure that further examination is carried out, including additional audits where necessary, to establish the scale of such problems. The necessary preventive and corrective measures shall be taken by the relevant authorities.

6 The audit authority shall draw conclusions on the basis of the results of the audits relating to expenditure declared to the Commission and shall communicate the conclusions to the Commission in the annual audit report. In annual programmes for which the error rate is above the materiality level of 2 % of the Community contribution, the audit authority shall analyse the significance of this error and take the necessary measures, including making appropriate recommendations, which shall be communicated at least in the annual audit report.

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Article 18

Verifications by the certifying authority

1 In cases where the audit authority gives a qualified opinion or an adverse opinion on the functioning of the management and control system, the certifying authority shall verify that this information has been sent to the Commission. It shall also ensure that an adequate action plan has been implemented by the responsible authority to restore effectively functioning management and control systems and to assess the impact of the malfunctioning on the declaration of expenditure.

2 If the request for payment or statement of reimbursement is not validated by the audit authority for the final report on implementation of the annual programme, the certifying authority shall ensure that a correct request for payment or statement of reimbursement is established without delay.

Changes to legislation:

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