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*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), PART II. (See end of Document for details)*

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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)

## PART II U.K.

### PROVISIONS COMMON TO THE FOUR FUNDS

#### CHAPTER 1 U.K.

##### Designated authorities

###### Article 3 U.K.

##### Common authorities

Member States may designate the same responsible authority, audit authority or certifying authority for two or more of the four Funds.

###### Article 4 U.K.

##### Delegated authority

1 Any delegation of tasks shall comply with the principle of sound financial management, which requires effective and efficient internal control, and shall ensure compliance with the principle of non-discrimination and the visibility of Community funding. No implementing tasks delegated may give rise to conflicts of interest.

2 The scope of the tasks delegated by the responsible authority to the delegated authority and the detailed procedures for implementation of the delegated tasks shall be formally recorded in writing.

The act of delegation shall mention at least:

- a the references of the relevant Community legislation;
- b the task entrusted to the delegated authority;
- c the rights and duties of the delegated authority and the responsibilities it assumes;
- d the obligation for the delegated authority to put in place and to maintain an organisational structure and a management and control system adapted to performance of its duties;

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3 The handling of communication with the Commission referred to in Article 27(1)(a) of the basic act shall not be delegated. The delegated authority shall communicate with the Commission via the responsible authority.

4 If the delegated authority is not a public administration or a body governed by the private law of the Member State which has a public-service mission, the responsible authority may not delegate to that authority any executive powers which involve a large measure of discretion implying political choices.

5 Delegation of tasks to the delegated authorities shall not affect the liability of the responsible authority, which shall remain answerable for the tasks it has delegated.

6 Where the responsible authority has delegated tasks to the delegated authority, all provisions of this Decision relating to the responsible authority shall apply *mutatis mutandis* to the delegated authority.

#### Article 5 U.K.

### Outsourcing of tasks

Designated authorities may outsource some of their tasks but they shall remain answerable for the outsourced tasks in accordance with the responsibilities defined in Articles 29, 31 and 32 of the basic act.

## CHAPTER 2 U.K.

### Management and control systems

#### Article 6 U.K.

### 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;

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- (i) preparation of audit reports and declarations;
- (j) certification of expenditure;
- (k) evaluation of the programme;
- (l) reporting to the Commission;
- (m) audit trail.

#### Article 7 **U.K.**

### 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 **U.K.**

### 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

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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:

- a the audit authority shall not be part of the same body as the responsible authority, except when its audit independence is guaranteed and it also reports to another body outside the body of which it and the responsible authority form part;
- b the tasks of the responsible authority, as defined in Article 29 of the basic act, shall not be affected when the responsible authority also implements projects directly.

7 When a delegated authority is expected to be executing body for projects co-financed by the Fund, this delegated authority may not be the sole final beneficiary of the appropriations which it was delegated to manage.

#### Article 9 **U.K.**

##### **Selection and award procedure when the responsible authority acts as awarding body**

1 The calls for proposals defined in Article 7(2) shall be published in a way that ensures maximum publicity among potential beneficiaries. <sup>[F1]</sup>Any substantial change to the content of the calls for proposals shall also be published under the same conditions.]

The calls for proposals shall specify:

- a the objectives;
- b the selection criteria, which shall comply with Article 16(5) of the basic act, and the relevant supporting documents;
- c the arrangements for Community and, if applicable, national financing;
- d the arrangements and final date for submission of proposals.

2 For the purposes of selection of projects and award of grants, the responsible authority shall ensure that potential beneficiaries are informed of the following specific conditions concerning the projects to be implemented:

- a the eligibility rules for the expenditure;
- b the time-limit for implementation; and
- c the financial and other information to be kept and communicated.

Before the award decision is taken the responsible authority shall satisfy itself that the final beneficiary and/or the partners in the project have the capacity to fulfil these conditions.

3 The responsible authority shall ensure that projects awarded grants have been subject to a formal, technical and budgetary analysis and qualitative assessment applying the criteria laid down in the call for proposals. The reasons for rejection of the other projects shall be recorded.

4 Member States shall determine who shall have the power to award projects and shall ensure that conflicts of interest are avoided in all cases and, in particular, when the applicants are national bodies.

5 The award decision shall indicate at least the name of the final beneficiary and/or of the partners in the project, the essential details of the project and its operational objectives, the maximum amount of co-financing from the Fund and the maximum rate of co-financing of the total eligible costs.

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6 Written information shall be sent to each applicant on the results of the selection process containing an explanation of the selection decisions. If provided for in national legislation, the relevant review procedure shall be mentioned.

### 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 **U.K.**

#### 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

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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.

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.

<sup>F1</sup> Article 11 **U.K.**

### 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 **U.K.**

### 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

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### Article 13 U.K.

#### 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 U.K.

#### 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 U.K.

#### 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

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- c 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 **U.K.**

##### **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 **U.K.**

##### **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.



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### The sampling method shall

- a include an appropriate mix of types and sizes of projects;
- b take account of any risk factors which have been identified by national or Community controls and the cost-benefit aspects of the verifications.

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 **U.K.**

### 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.

#### CHAPTER 3 **U.K.**

### Information to be provided regarding use of the Fund

#### Article 19 **U.K.**

### Principle of proportionality

1 Pursuant to Article 10(2) of the basic act, the extent to which the information available to a Member State on use of the Fund is transmitted to the Commission in the documents referred to in this chapter may be proportionate to the amount of the Community contribution allocated to the Member State concerned and, where appropriate, this information may be provided in summarised form.

2 However, upon a request from the Commission, the Member State shall nevertheless provide more detailed information. The Commission may request this information if it appears necessary in order for the Commission to fulfil effectively its obligations under the basic act and the Financial Regulation.

#### Article 20 **U.K.**

### Description of management and control systems

1 The description of the management and control systems referred to in Articles 33(4) and 34(2) of the basic act shall be submitted in accordance with the model in Annex I.

2 The responsible authority shall validate the description of the systems implemented by any delegated authority. Each of the designated authorities shall confirm the accuracy of the description of the management and control systems which concerns it. In addition, the audit authority shall also confirm the completeness of the description.

3 When examining the description, the Commission may request clarifications and propose measures to comply with the provisions defined in the basic act. If necessary, on-site visits may be carried out by Commission officials or authorised Commission representatives.

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4 If the responsible authority is the same for two or more (or more) of the four Funds or where common systems apply to two or more of the Funds, a description of the common management and control systems may be submitted highlighting, where appropriate, any specific features.

## Article 21 U.K.

### Revision of the description of management and control systems

[<sup>F1</sup> The responsible authority shall notify the Commission by formal letter of any substantial change in the management and control system and shall send a revised description of the management and control system to the Commission as soon as possible and at the latest at the time any such change takes effect.]

2 Substantial changes are changes which are likely to have an impact on the separation of functions, on the effectiveness of selection, award, control and payment mechanisms and on communication with the Commission. They shall include, in particular, changes in one of the designated authorities, in the accounting system and in the payment and certification processes.

3 Revision of the management and control systems shall follow the same procedure as laid down in Article 20.

#### 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 22 U.K.

### Programming documents

1 Member States shall submit to the Commission a multiannual programme, as referred to in Article 21 of the basic act, in accordance with the model in Annex II.

2 Member States shall submit to the Commission the annual programmes, as referred to in Article 23 of the basic act, in accordance with the model in Annex III.

3 The financial plans linked to the multiannual programme shall present a breakdown of the budgeted amounts by priority, as defined in the strategic guidelines.

The financial plans linked to the annual programmes shall present a breakdown of the budgeted amounts by category of action, as defined in Article 3(1) of the basic act, with a reference to the priorities.

**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), PART II. (See end of Document for details)

### Article 23 **U.K.**

#### Revision of financial breakdown in annual programmes

[<sup>F21</sup> In order to revise the annual programme approved by the Commission pursuant to Article 23(4) of the basic act, the Member State concerned shall submit a revised draft annual programme to the Commission at the latest three months before the end of the eligibility period. The Commission shall examine and, as soon as possible, approve the revised programme in accordance with the procedure laid down in Article 23(4) of the basic act.]

2 Changes to the financial breakdown without revision of the annual programme pursuant to paragraph 1 shall not exceed 10 % of the total contribution from the Fund and shall be allowed only in circumstances justified by causes beyond the control of the responsible authority. An adequate explanation of any such changes shall be provided in the progress report and/or in the final report on the implementation of the annual programme.

#### Textual Amendments

**F2** Substituted by Commission Decision of 10 July 2009 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 number C(2009) 5373) (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) (2009/538/EC).

### Article 24 **U.K.**

#### [<sup>F3</sup>Progress and final reports on implementation of annual programmes and requests for payments]

1 Member States shall submit to the Commission the progress reports on implementation of the annual programme and payment requests, as referred to in Article 41(4) of the basic act, in accordance with the model in Annex IV.

2 Member States shall submit to the Commission the final reports on implementation of the annual programme and payment requests, as referred to in Article 42(1)(b) of the basic act, in accordance with the model in Annex V.

[<sup>F13</sup> The financial tables linked to the progress reports and final reports shall present a breakdown of the amounts both by priority and by specific priority, as defined in the strategic guidelines.]

[<sup>F4</sup> With reference to Article 41(3) and (4) of the basic act, the cumulative total of pre-financing payments made to a Member State shall not exceed 90 % of the total amount allocated to such Member State in the financing decision approving the annual programme.

Where a Member State has nationally committed less than the total amount allocated by the financing decision approving the annual programme, the cumulative total of the pre-financing payments shall not exceed 90 % of the nationally committed amount.]

**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), PART II. (See end of Document for details)

### 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).
- F3** Substituted by Commission Decision of 8 February 2010 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(2010) 694) (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) (2010/69/EU).
- F4** Inserted by Commission Decision of 8 February 2010 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(2010) 694) (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) (2010/69/EU).

## Article 25 U.K.

### Documents established by the audit authority

1 The audit strategy referred to in Article 32(1)(c) of the basic act shall be established in accordance with the model in Annex VI.<sup>[F5]</sup> Any changes to the audit strategy submitted in respect of Article 32(1)(c) of the basic act and accepted by the Commission shall be sent to the Commission as soon as possible. The revised audit strategy shall be established in accordance with the model in Annex VI, marking the revisions introduced.]

<sup>[F12]</sup> Except when each of the last two annual programmes adopted by the Commission corresponds to an annual Community contribution of less than EUR 1 million, the audit authority shall submit an annual audit plan before 15 February each year, as from 2010. The audit plan shall be established in accordance with the model in Annex VI. Member States are not required to resubmit the audit strategy when submitting the annual audit plans. In the case of a combined audit strategy, as provided for in Article 32(2) of the basic act, a combined annual audit plan may be submitted.]

3 The audit report and the opinion referred to in Articles 32(3)(a) and 32(3)(b) of the basic act shall be based on the systems audits and audits of projects carried out in accordance with the audit strategy and shall be drawn up in accordance with the models in Annexes VII.A and VII.B.

**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) (Articles 32(3)(c) of the basic act shall be based

4 The validity declaration shall be drawn up on all the audit work carried out by the audit authority and on additional checks, if necessary. The validity declaration shall be drawn up in accordance with the model in Annex VII.C.

5 If there is any limitation on the scope of the examination or if the level of irregular expenditure detected does not allow provision of an unqualified opinion for the annual opinion referred to in Article 32(3)(b) of the basic act or in the declaration referred to in point (c) of the same Article, the audit authority shall give the reasons and estimate the scale of the problem and its financial impact.

#### 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).
- F5** Inserted 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).

<sup>F1</sup> Article 26 **U.K.**

#### Documents established by the certifying authority

1 The certification relating to the request for a second pre-financing payment referred to in Article 41(4) of the basic act shall be drawn up by the certifying authority and transmitted by the responsible authority to the Commission in the format in Annex VIII.

2 The certification relating to the request for a final payment referred to in Article 42(1)(a) of the basic act shall be drawn up by the certifying authority and transmitted by the responsible authority to the Commission in the format in Annex IX.]

#### 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,

**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) (2008/436/EC), Slovak (Second of Spanish or Swedish texts are authentic) (2011/148/EU).

## CHAPTER 4 **U.K.**

### Reporting irregularities

#### Article 27 **U.K.**

#### Initial reporting — derogations

1 In accordance with the models in Annexes IV and V, Member States shall report to the Commission any irregularity which has been the subject of a primary administrative or judicial finding in the progress or final reports on implementation of the annual programmes.

The report shall indicate:

- a the Fund, the annual programme and the project concerned;
- b the provision which has been infringed;
- c the date and the source of the first information leading to suspicion that an irregularity has been committed;
- d the practices employed in committing the irregularity;
- e where appropriate, whether the practice gives rise to a suspicion of fraud;
- f the manner in which the irregularity was discovered;
- g the amount of the Community contribution concerned.

However, the following cases need not be reported, except in cases of suspected fraud:

- a cases where the irregularities relate to amounts of less than 10 000 euros chargeable to the general budget of the European Communities;
- b cases where the irregularity consists solely of failure to implement, in whole or in part, a project included in the annual programme owing to the bankruptcy of the final beneficiary;
- c cases brought to the attention of the responsible authority by the final beneficiary voluntarily and before detection by the responsible authority, whether before or after payment of the public contribution;
- d cases detected and corrected by the responsible authority before any payment of the public contribution to the final beneficiary and before inclusion of the expenditure concerned in a declaration of expenditure submitted to the Commission.

2 At the request of the Commission, Member States shall in all cases give further details concerning:

- a where appropriate, the other Member States and third countries involved;
- b the period during which, or the moment at which, the irregularity was committed;
- c the national authorities or bodies which drew up the official report on the irregularity and the authorities responsible for the administrative or judicial follow-up;
- d the date on which the primary administrative or judicial finding on the irregularity was established;
- e the identity of the natural and legal persons involved or of any other participating entities, except where this information is irrelevant for the purposes of combating irregularities, given the nature of the irregularity concerned;

**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 the public contribution approved for the project and the distribution

- of its co-financing between the Community and national contributions;
- g the amount of the public contribution affected by the irregularity and the corresponding Community contribution at risk;
  - h where no payment of the public contribution referred to under point (g) has been made to the persons or other entities identified, the amounts which would have been unduly paid had the irregularity not been identified;
  - i the suspension of payments, where applicable, and the possibilities of recovery;
  - j the nature of the irregular expenditure.
- 3 Where some of the information referred to in paragraph 2, in particular on the practices employed in committing the irregularity and on the manner in which the irregularity was discovered, is not available, Member States shall as far as possible supply the missing information when forwarding subsequent reports of irregularities to the Commission.

Article 28 **U.K.**

### Reporting of follow-up — Non-recovery

1 Member States shall inform the Commission, with reference to any previous report made under Article 27, of the procedures instituted with respect to all irregularities previously notified and of significant changes resulting from them. This information shall be given in the progress reports or final reports on implementation of the annual programmes in accordance with the models in Annexes IV and V.

The report shall indicate the amounts which have been, or are expected to be, recovered.

2 At the request of the Commission, Member States shall in all cases give further details concerning:

- a any interim measures taken by Member States to safeguard recovery of sums unduly paid;
- b any judicial and administrative procedures instituted with a view to recovering sums unduly paid and to imposing sanctions;
- c the reasons for any abandonment of recovery procedures;
- d the reasons for any abandonment of criminal prosecutions.

Member States shall report to the Commission all administrative or judicial decisions terminating such procedures, or the main points thereof, and shall state, in particular, whether or not the findings are such that fraud is suspected.

Article 29 **U.K.**

### Contacts with Member States

1 The Commission shall maintain appropriate contacts with the Member States concerned for the purpose of supplementing the information supplied on the irregularities referred to in Article 27 and on the procedures referred to in Article 28 on the possibility of recovery.

2 Independently of the contacts referred to in paragraph 1, the Commission shall inform Member States in cases where the nature of the irregularity is such as to suggest that identical or similar practices could occur in other Member States.



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**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), PART II. (See end of Document for details)

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### Article 30 U.K.

#### Use of information

1 The Commission may use any information of a general or operational nature communicated by Member States under this Decision to perform risk analyses and may, on the basis of the information obtained, produce reports and develop early-warning systems serving to identify risks more effectively.

2 The Commission shall regularly inform the Member States concerned of the use made of information under paragraph 1.

### CHAPTER 5 U.K.

#### Information and publicity

### Article 31 U.K.

#### Information for potential final beneficiaries

1 The responsible authority shall ensure that the key indications regarding the multiannual and annual programmes are disseminated widely, with details of the financial contributions concerned, and that they are made available to all interested parties.

However, the responsible authority may decide to keep confidential the internal management arrangements laid down in the multiannual programme or in the annual programmes and any other information relating to implementation of the Fund on grounds of public security.

2 The responsible authority shall provide potential final beneficiaries with at least the following information:

- a the conditions of eligibility to be met in order to qualify for financing under an annual programme;
- b a description of the procedures for examining applications for funding and of the time periods involved;
- c the criteria for selecting the projects to be financed;
- d the contacts who can provide information on the annual programmes.

In addition, the responsible authority shall inform potential final beneficiaries of the publication provided for in Article 33(2)(b).

### Article 32 U.K.

#### Information for final beneficiaries

The responsible authority shall inform final beneficiaries that acceptance of funding also implies acceptance of their inclusion on the list of final beneficiaries published in accordance with Article 33(2)(b).

**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), PART II. (See end of Document for details)

Article 33 **U.K.**

**Responsibilities of the responsible authority relating to information and publicity for the general public**

1 The responsible authority shall ensure that information and publicity measures are implemented with the aim of the widest possible media coverage using various forms and methods of communication at the appropriate territorial level.

2 The responsible authority shall organise at least the following information and publicity measures:

- a at least one information activity a year, presenting, as of 2008, the launch of the multiannual programme or the achievements of the annual programme(s);
- b annual publication, at least on a website, of the list of final beneficiaries, the names of the projects and the amount of public and Community funding allocated to them. The address of the website shall be communicated to the Commission.

Article 34 **U.K.**

**Responsibilities of final beneficiaries relating to information and publicity for the general public**

1 The final beneficiary shall be responsible for informing the public, by means of the measures laid down in paragraphs 2, 3 and 4, about the assistance obtained from the Fund.

2 The final beneficiary shall put up a permanent prominent plaque of significant size no later than three months after completion of any project that fulfils the following conditions:

- a the total Community contribution to the project exceeds EUR 100 000; and
- b the operation consists of purchasing a physical object or of financing infrastructure or construction projects.

The plaque shall state the type and name of the project. In addition, the information referred to in Article 35 shall take up at least 25 % of the plaque.

3 Where a project receives funding under an annual programme co-financed by the Fund, the final beneficiary shall ensure that those taking part in the project have been informed of that funding.

4 Any document, including any attendance or other certificate, concerning such projects shall include a statement indicating that the project is co-financed by the Fund.

Article 35 **U.K.**

**Technical characteristics of information and publicity for the operation**

All information and publicity measures aimed at final beneficiaries, potential final beneficiaries and the general public shall include:

1. the emblem of the European Union, in accordance with the graphic standards indicated in Annex X, and a reference to the European Union;
2. a reference to the Fund;

**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).

3. ~~statements chosen by the responsible authority, highlighting the added value of the contribution from the Community.~~

For small promotional items or for promotional items linked to two or more of the four Funds, points 1 and 3 shall not apply.

## CHAPTER 6 U.K.

### Personal data

#### Article 36 U.K.

### Protection of personal data

1 Member States and the Commission shall take all necessary measures to prevent any unauthorised disclosure of, or illegitimate access to, the information referred to in Article 29(1) (h) of the basic act, information collected by the Commission in the course of its on-the-spot checks and the information referred to in Chapter 4.

2 The information referred to in Chapter 4 may not be sent to persons other than those in the Member States or within the Community institutions whose duties require that they have access to it, unless the Member State supplying such information has expressly agreed so.

## CHAPTER 7 U.K.

### Electronic exchange of documents

#### <sup>F1</sup> Article 37 U.K.

### Electronic exchange of documents

In addition to the duly signed paper versions of the documents referred to in Chapter 3, the information shall also be sent by electronic means.]

#### 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).

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**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), PART II. (See end of Document for details)

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Article 38 **U.K.**

**Computer system for the exchange of documents**

- 1 If the Commission develops a computer system for secure data exchange between the Commission and each Member State for implementation of the Fund, the Member States shall be informed of and, at their request, involved in development of any such computer system.
- 2 The Commission and the designated authorities, along with the bodies to which the tasks have been delegated, shall record the documents referred to in Chapter 3 in the computer system mentioned in paragraph 1.
- 3 In addition, Member States may be invited voluntarily to provide information referred to in Articles 27 and 28 using the existing specific system managed by the Commission for collecting the irregularities detected under the Structural Funds.
- 4 Any costs of an interface between the common computer system and national, regional and local computer systems and any costs of adapting national, regional and local systems to the technical requirements of the common system shall be eligible under Article 18 of the basic act.

**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), PART II.