

## 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)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to 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' <sup>(1)</sup>, in particular Articles 25 and 37(4) thereof,

Whereas:

- (1) In the light of the experiences following the launch of the Fund, it is appropriate to extend the eligibility period of the annual programmes in order to enable Member States to implement the Fund in an effective way and to adapt the time schedule for the submission of the final report on the implementation of the annual programme.
- (2) It is also appropriate to adapt the procedure for the submission of revised annual programmes by Member States.
- (3) In accordance with Articles 1 and 2 of the Protocol on the position of Denmark, annexed to the Treaty on European Union and the Treaty establishing the European Community, Denmark has implemented Decision No 574/2007/EC in its national law and is therefore bound by this Decision.
- (4) This Decision constitutes a development of the provisions of the Schengen *acquis* in which the United Kingdom does not take part, in accordance with Council Decision 2000/365/EC of 29 May 2000 concerning the request of the United Kingdom of Great Britain and Northern Ireland to take part in some of the provisions of the Schengen *acquis* <sup>(2)</sup>, and the subsequent Council Decision 2004/926/EC of 22 December 2004 on the putting into effect of parts of the Schengen *acquis* by

the United Kingdom of Great Britain and Northern Ireland <sup>(3)</sup> The United Kingdom is therefore not bound by it or subject to its application.

- (5) This Decision constitutes a development of the provisions of the Schengen *acquis* <sup>(4)</sup> in which Ireland does not take part, in accordance with Council Decision 2002/192/EC <sup>(5)</sup> of 28 February 2002 concerning Ireland's request to take part in some of the provisions of the Schengen *acquis*. Ireland is therefore not bound by it or subject to its application.
- (6) As regards Iceland and Norway, Decision No 574/2007/EC constitutes a development of provisions of the Schengen *acquis* within the meaning of the Agreement concluded by the Council of the European Union and the Republic of Iceland and the Kingdom of Norway concerning the association of those two States with the implementation, application and development of the Schengen *acquis* <sup>(6)</sup>, which fall within the areas referred to in Article 1, points A and B of Council Decision 1999/437/EC of 17 May 1999 on certain arrangements for the application of the Agreement concluded by the Council of the European Union and the Republic of Iceland and the Kingdom of Norway concerning the association of those two States with the implementation, application and development of the Schengen *acquis* <sup>(7)</sup>.
- (7) As regards Switzerland, Decision No 574/2007/EC constitutes a development of the provisions of the Schengen *acquis* within the meaning of the Agreement signed by the European Union, the European Community and the Swiss Confederation on the latter's association with the implementation, application and development of the Schengen *acquis* which fall within the areas referred to in Article 4(1) of the Council Decision on the signing, on behalf of the European Community, and on the provisional application of certain provisions of this Agreement.

<sup>(1)</sup> OJ L 144, 6.6.2007, p. 22.

<sup>(2)</sup> OJ L 131, 1.6.2000, p. 43.

<sup>(3)</sup> OJ L 395, 31.12.2004, p. 70.

<sup>(4)</sup> OJ L 64, 7.3.2002, p. 20.

<sup>(5)</sup> OJ L 64, 7.3.2002, p. 20.

<sup>(6)</sup> OJ L 176, 10.7.1999, p. 36.

<sup>(7)</sup> OJ L 176, 10.7.1999, p. 31.

- (8) The measures provided for in this Decision are in accordance with the opinion of the common Committee 'Solidarity and Management of Migration Flows',

HAS ADOPTED THIS DECISION:

*Article 1*

Commission Decision 2008/456/EC <sup>(1)</sup> is amended as follows:

1. Article 23(1) is replaced by the following:

'1. 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. in point 4.1 of Annex V, Part A, the words 'List of all pending recoveries at 30 June of the year N + 2 (N = year of this annual programme)' are replaced by the words 'List of all pending recoveries six months after the eligibility deadline for expenditure';

3. in Annex XI, point I.4.1 is replaced by the following:

'1. Costs relating to a project must be incurred and the respective payments (except for depreciation) made after 1 January of the year referred to in the financing decision approving the annual programmes of the Member States. The eligibility period is until 30 June of the year N (\*) + 2, meaning that the costs relating to a project must be incurred before this date.

(\*) Where "N" is the year referred to in the financing decision approving the annual programmes of the Member States.;

4. in Annex XI, point V.3 is replaced by the following:

'3. Activities linked to technical assistance must be performed and the corresponding payments made after 1 January of the year referred to in the financing decision approving the annual programmes of the Member States. The eligibility period lasts at the latest until the deadline for the submission of the final report on the implementation of the annual programme.'

*Article 2*

This Decision shall apply to all annual programmes for which the payment of the balance has not been made at the date of its adoption.

*Article 3*

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

Done at Brussels, 10 July 2009.

*For the Commission*

Jacques BARROT

*Vice-President*

<sup>(1)</sup> OJ L 167, 27.6.2008, p. 1.