

## 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)

THE EUROPEAN COMMISSION,

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

Having regard to Decision No 574/2007/EC of the European Parliament and of the Council of 23 May 2007 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 Article 25 thereof,

Whereas:

- (1) Decision No 574/2007/EC has been implemented by Commission Decision 2008/456/EC<sup>(2)</sup>.
- (2) With regard to the principle of sound financial management, it is appropriate to fix a ceiling for the cumulative total of pre-financing payments to be made for annual programmes.
- (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 on the Functioning of the European Union, Denmark did not take part in the adoption of Decision No 574/2007/EC and is not bound by it nor subject to its application. However, given that Decision No 574/2007/EC builds upon the Schengen *acquis* under the provisions of Title V of Part Three of the Treaty on the Functioning of the European Union, Denmark in accordance with Article 4 of the Protocol, notified by letter of 19 June 2007 the transposition of Decision No 574/2007/EC in its national law. It is therefore bound under international law 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>(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* in which Ireland does not take part, in accordance with Council Decision 2002/192/EC of 28 February 2002 concerning Ireland’s request to take part in some of the provisions of the Schengen *acquis*<sup>(4)</sup>. 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 latter’s association with the implementation, application and development of the Schengen *acquis*<sup>(5)</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>(6)</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 between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation’s association with the implementation, application and development of the Schengen *acquis*<sup>(7)</sup>, which fall within the areas referred to in Article 1, points

<sup>(1)</sup> OJ L 144, 6.6.2007, p. 22.<sup>(2)</sup> OJ L 167, 27.6.2008, p. 1.<sup>(3)</sup> OJ L 131, 1.6.2000, p. 43.<sup>(4)</sup> OJ L 64, 7.3.2002, p. 20.<sup>(5)</sup> OJ L 176, 10.7.1999, p. 36.<sup>(6)</sup> OJ L 176, 10.7.1999, p. 31.<sup>(7)</sup> OJ L 53, 27.2.2008, p. 52.

A and B of the Decision 1999/437/EC read in conjunction with Article 3 of Council Decision 2008/146/EC of 28 January 2008 on the conclusion, on behalf of the European Community, of the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis* <sup>(1)</sup>.

- (8) As regards Liechtenstein, Decision No 574/2007/EC constitutes a development of the provisions of the Schengen *acquis* within the meaning of the Protocol signed between the European Union, the European Community, the Swiss Confederation and the Principality of Liechtenstein on the accession of the Principality of Liechtenstein to the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis*, which fall within the areas referred to in Article 1, points A and B of the Decision 1999/437/EC read in conjunction with Article 3 of Council Decision 2008/261/EC of 28 February 2008 on the signature, on behalf of the European Community, and on the provisional application of certain provisions of the Protocol between the European Union, the European Community, the Swiss Confederation and the Principality of Liechtenstein on the accession of the Principality of Liechtenstein to the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis* <sup>(2)</sup>.

- (9) Decision 2008/456/EC should therefore be amended accordingly,

HAS ADOPTED THIS DECISION:

#### Article 1

Decision 2008/456/EC is amended as follows:

1. The title of Article 24 is replaced by the following:

'Progress and final reports on implementation of annual programmes and requests for payments';

2. In Article 24, the following paragraph 4 is added:

'4. 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.'

#### Article 2

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, 8 February 2010.

For the Commission

Jacques BARROT

Vice-President

<sup>(1)</sup> OJ L 53, 27.2.2008, p. 1.

<sup>(2)</sup> OJ L 83, 26.3.2008, p. 3.