DECISION No 9
OF THE MANAGEMENT BOARD OF FRONTEX
of 27 August 2007

detailing the rules concerning the payment of the daily subsistence allowance of members of the Rapid Border Intervention Teams during deployment and border guards of the Rapid Pool who are participating in training and exercises

THE MANAGEMENT BOARD,


Acting in accordance with the written procedure, laid down in Article 8 of the Rules of Procedure of the Management Board,

Whereas:

(1) Regulation (EC) No 863/2007 establishes a mechanism for the creation of Rapid Border Intervention Teams.

(2) Article 8h(1) of amended Council Regulation (EC) No 2007/2004 states that Frontex shall fully meet the costs listed in that Article incurred by the Member States in making available their border guards for the purpose of deployment and training and exercise of Rapid Border Intervention Teams.

(3) The costs listed in Article 8h(1) of amended Council Regulation (EC) No 2007/2004 include in point (e) the daily subsistence allowance, including accommodation costs.


(5) Regard should be had to the Commission's Guide to missions for officials and other servants of the European Commission.

(6) Regard should be had to the rules and practices established under the Framework Partnership Agreements between Frontex and the Member States.

(7) As regards Iceland and Norway, Regulation (EC) No 863/2007 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 which fall within the area referred to in Article 1, point A, of Council Decision 1999/437/EC on certain arrangements for the application of that Agreement.3

(8) In accordance with Articles 1 and 2 of the Protocol on the position of Denmark annexed to the Treaty on European Union and to the Treaty establishing the European Community, Denmark has not taken part in the adoption of Regulation (EC) No 863/2007 and is not bound by it or subject to its application. Given that Regulation (EC) No 863/2007 builds on the Schengen acquis under the provisions of Title IV of Part Three of the Treaty establishing the European Community, Denmark should, in accordance with Article 5 of that Protocol, decide within a period of six months after the date of adoption of Regulation (EC) No 863/2007 whether it will transpose it in its national law or not.

(9) As regards the United Kingdom, Regulation (EC) No 863/2007 constitutes a development of 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.4 The United Kingdom has therefore not taken part in its adoption and is not bound by it or subject to its application.

(10) In view of Articles 12 and 20(5) of amended Regulation (EC) No 2004/2007 establishing Frontex,5 as well as the Council’s Declaration of 4 June 2007, the way in which the United Kingdom can practically support the operations of Rapid Border Intervention Teams shall be subject to separate decisions of the Management Board.

(11) As regards Ireland, Regulation (EC) No 863/2007 constitutes a development of 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.6 Ireland has therefore not taken part in its adoption and is not bound by it or subject to its application.

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2 OJ L 176, 10.7.1999, p. 36.
3 OJ L 176, 10.7.1999, p. 31.
4 OJ L 131, 1.6.2000, p. 43.
HAS ADOPTED THIS DECISION:

CHAPTER I
General Provision

Article 1
Definitions
1. ‘Activity’ means the deployment of a Rapid Border Intervention Team in accordance with Article 8a of amended Council Regulation (EC) No 2007/2004 and/or training and exercise in accordance with Article 8c of said Regulation.

2. ‘Participating border guards’ means border guards, other than those of the host Member State on the territory of which the deployment of Rapid Border Intervention Team takes place, taking part in an activity as defined in paragraph 1 of this Article.

CHAPTER II
Daily subsistence allowance

Article 2
Daily subsistence allowance
Participating border guards shall be paid a daily subsistence allowance by their home Member States in accordance with national rules and regulations.

Article 3
Reimbursement of daily subsistence allowance
1. Frontex shall, in accordance with the rules laid down in this decision, reimburse the Member States the daily subsistence allowance as paid in accordance with their national rules and regulations.

2. The daily subsistence allowance reimbursed to the Member States by Frontex shall not exceed the maximum amounts for daily subsistence allowances set by the Commission annually on the basis of the Staff Regulations of Officials of the European Communities.

3. For the purpose of establishing the maximum reimbursable daily subsistence allowance, the length of the activity is calculated from the day of departure of the means of transport used to the day of its arrival on return to the place of employment.

4. Frontex shall not reimburse a daily subsistence allowance in case specific arrangements made prior to the activity determine that the expenses normally covered by the daily subsistence allowance will be taken care of by a particular organisation for the duration of the activity.

CHAPTER III
Accommodation costs
Article 4

*Accommodation costs*

The host Member State, with the coordination of Frontex, shall organise the accommodation for participating border guards for the duration of the activity, whilst the home Member States cover the accommodation costs of their participating border guards, unless other arrangements are agreed upon.

Article 5

*Reimbursement of accommodation costs*

1. Frontex shall reimburse the accommodation costs incurred by the Member States for the purpose of the activity, under the conditions laid down in this decision.
2. The costs for accommodation shall be reimbursed up to the maximum set by the Commission annually on the basis of the Staff Regulations of Officials of the European Communities.
3. Where the cost of accommodation is more than the maximum limit, a duly substantiated application for special authorisation should be attached to the statement of expenses. Additional reimbursement should cover the difference between the price of the accommodation and the maximum accommodation price allowed for the country concerned. Even in case special authorisation is granted, reimbursement of accommodation costs will be limited to 300 Euro per night.

Article 6

*Cancellation*

1. In the event of cancellation, postponement or alteration of reservation the Member State in charge of the reservation shall inform the accommodation owner immediately in writing (fax or e-mail).
2. Reimbursement of cancellation fees will not be possible where these are the result of negligence on the part of the Member State.

CHAPTER IV

*Reimbursement*

Article 7

*Request for reimbursement*

1. The Member States shall submit to Frontex one single request for reimbursement of the daily subsistence allowances and accommodation costs of their participating border guards.
2. The request for reimbursement shall be submitted preferably no later than six weeks after the termination of the activity.
3. The request for reimbursement for daily subsistence allowances and accommodation costs shall be submitted together with the request for reimbursement of other eligible costs, as laid down in Article 8h(1) amended Council Regulation (EC) No 2007/2004 where these costs are incurred at the same time.

Article 8

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Conditions for eligibility
To be considered eligible for reimbursement the costs must satisfy the following general criteria:

- they must be incurred by participating border guards as defined by Article 1 of this decision,
- they must be connected to and have been necessary for the activity;
- they must be reasonable and justified and they must accord with the principles of sound financial management, in particular in terms of value for money and cost-effectiveness;
- they must have been actually incurred by the Member State, be recorded in its accounts in accordance with the applicable accounting principles, and be declared in accordance with the requirements of the applicable tax and social legislation;
- they must be identifiable and verifiable.

Article 9
Internal accounting and auditing
The Member States' internal accounting and auditing procedures must permit direct reconciliation of the costs and revenue declared in respect of the activity with the corresponding accounting statements and supporting documents.

Article 10
Documents to be submitted
1. Requests for reimbursement shall contain the following reports and documentation:
   - a final financial statement of the costs of daily subsistence allowance and accommodation actually incurred;
   - in the event of deployment of a Rapid Border Intervention Team: a report on the activity from the Member State's point of view.
2. All supporting documents (tickets, boarding cards, copies of the original invoices with proof of payment, etc) must be attached.
3. The actual receipts to be taken into account shall be those which have been established, generated or confirmed until the date on which the request for reimbursement is drawn up by the Member State.
4. If it deems necessary, Frontex shall ask the Member State for additional supporting documents or information; a deadline for the submission of additional information or supporting documents shall be defined and the deadline for reimbursement will be extended accordingly.
5. In the absence of a written reply from Frontex within four weeks, the documentation shall be deemed to have been sufficient, however this does not imply recognition of the regularity or the authenticity, completeness and correctness of the declarations and information submitted.
6. Without prejudice to the information obtained subsequently pursuant to Article 14, Frontex shall adopt the amount of the final reimbursement to be granted to the Member States on the basis of the documents referred to in this Article.
Article 11

General provisions on reimbursement

1. Reimbursements shall be made by Frontex in euros. Any conversion of actual costs into euros shall be made at the monthly rate used by the European Union.
2. Reimbursements shall be made within three months from the date of receipt of the necessary documentation listed in Article 10.
3. Reimbursements by Frontex shall be deemed to be effected on the date when they are debited to Frontex’ account.
4. Frontex may suspend the period for reimbursement at any time if a Member State is required to produce additional supporting documents or if there is a suspicion that some of the expenses in the financial statement are not eligible and additional checks need to be conducted.
5. Frontex may suspend the period for reimbursement at any time if a Member State is found or presumed to have infringed the provisions of this Decision, in particular as a result of audits and checks provided for in Article 14.
6. Frontex shall inform the Member State of a suspension on the basis of paragraphs 4 and 5 of this Article. Suspension shall take effect on the date when notice is sent by Frontex. The remaining reimbursement period shall start to run again from the date when a properly constituted request for reimbursement is registered, when the supporting documents requested are received, or at the end of the suspension period as notified by Frontex. The suspension of reimbursement by Frontex may not be considered as late payment.

Article 12

Recovery

1. If any amount is unduly paid to a Member State or if recovery is justified, the Member State in question shall undertake to repay Frontex the sum in question on whatever terms and by whatever date Frontex may specify.
2. If a Member State fails to repay by the due date, the sum due shall bear interest at the rate applied by the European Central Bank to its principal refinancing operations, as published in the C series of the Official Journal of the European Union on the first day of the month in which payment was due, increased by three and a half percentage points. The interest shall be payable for the period elapsing from the day following expiry of the time limit for payment up to the day of payment. Any partial payment shall first cover the interest.
3. Amounts to be repaid to Frontex may be offset against amounts of any kind due to the Member State, after informing it accordingly. The Member State’s prior consent is not required.
4. Bank charges incurred by the repayment of amounts due to Frontex shall be borne entirely by the Member State.

Article 13

Checks and Audits
1. The Member States undertake to provide any detailed information requested by
Frontex or by any other outside body authorised by Frontex to check that this
Decision is properly implemented.
2. The Member States shall keep at Frontex' disposal all original documents,
especially accounting and tax records, or, in exceptional and duly justified cases,
certified copies of original documents relating to requests for reimbursements for a
period of five years from the date of reimbursement of costs incurred for the
purpose of the activity.
3. The Member States agree that Frontex may have an audit in relation to requests for
reimbursement carried out either directly by its own staff or by any other outside
body authorised to do so, on its behalf. Such audits may be carried out throughout
the activity and for a period of five years from the date of reimbursement of costs
incurred for the purpose of the activity. Where appropriate, the audit findings may
lead to recovery decisions by Frontex.
4. The Member States undertake to allow Frontex staff and outside personnel
authorised by Frontex the appropriate right of access to relevant sites and premises
where necessary and to all the information, including information in electronic
format, needed in order to conduct such audits.
No 1073/1999 of the European Parliament and the Council, the European Anti-
Fraud Office (OLAF) may also carry out on-the-spot checks and inspections in
accordance with the procedures laid down by Community law for the protection of
the financial interests of the European Communities against fraud and other
irregularities. Where appropriate, the inspection findings may lead to recovery
decisions by Frontex.
6. The European Court of Auditors shall have the same rights as Frontex, notably right
of access, as regards checks and audits.

CHAPTER V
Final Provision

Article 14
Review

This Decision shall be reviewed by the Management Board on the basis of experience
gathered from the activities at the latest by the end of 2008.

Done at Warsaw, 27 August 2007

For the Management Board

[signed]

M. A. BEUVING
Chairperson

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