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**LIMITE**

**JAI**
**FRONT**
**VISA**
**SIRIS**
**COMIX**

WORKING PAPER

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**WORKING DOCUMENT**

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| From: | Presidency |
| To: | Ad Hoc Working Party on JHA Financial instruments |
| Subject: | Compilation of comments from Member States on the Borders Management and visa instruments |

Following the Ad Hoc Working Party on JHA Financial instruments meeting on 17 September 2018, delegations will find a compilation of comments from Member States on the Borders Management and visa instruments.

# BULGARIA

**Article 4 - Scope of support**

We consider appropriate actions relevant to systems and services referred to in paragraph 1(a) of Annex III at those internal borders at which controls have not been lifted yet to be defined eligible in view of ensuring efficient border control. The wording of paragraph 3 (a) should be revised in this regard.

**Article 7 - Budget**

We consider necessary an indicative breakdown of allocations for the MS under BMVI to be provided at the earliest possible stage.

**Article 15 - Operating support**

Welcoming the Commission's proposal to increase the funding for the management of external borders, we would like to ask for clarification on the possibility for increasing the maximum percentage of the Instrument to be used for Operating support.

**ANNEX VII Eligible actions for operating support**

Could you please specify, whether costs for fuel and consumables are eligible as per letter a) 2 “maintenance or repair of equipment and infrastructure”.

# CROATIA

As regards the analysis of the Proposal for a Regulation establishing the BMVI ,we believe that it is not good to use lump-sum redeployment of resources such as for example the amount of 35% used for the surveillance of the sea border, or 30% for the surveillance of the external land border. We think that **an individual model should be applied** as for instance from the position of the Republic of Croatia the said model does not reflect real needs. The Republic of Croatia does not have many issues when it comes to sea borders. However, it has a long external land border, so we believe that the part of financial resources intended for the surveillance of the external land border should be greater. Furthermore, we think that the fixed amount of 5 million euros for each Member State does not reflect real needs either. The redeployment should be in line with individual needs as well since not all Member States face the same challenges, have equally long external border, face the issue of irregular migration, etc.

**Articles 1-5** of the Proposal for a Regulation refer to General provisions which define its purpose, scope of application and list the main definitions. We do not have any remarks on the content of the said articles or Annexes II and III related to this part of the Regulation.

**Articles 7-16** lay down the financial and implementing frameworks. The provisions define the amount in the financial envelope to be used for the implementation of the Instrument as well as the implementing framework related to shared management. We do not have any remarks on the said articles or Annexes IV, VI and VII related to that part of the Regulation.

However, it is necessary to point to the planned reduction in operational support. A Member State may use up to 30% of the amount (previously it was 40%) which has been allocated to its national programme under the Instrument for the purpose of providing funds for operational support to public authorities competent for carrying out tasks and providing services considered to be public services of the Union. The said reduction in operational support has not been mentioned as an issue neither in our consolidated declaration on the MFF that we sent on 15 June, nor in the Proposal for the position of the Republic of Croatia regarding the Multiannual Financial Framework that you sent me by email on 14 August.

# CZECHIA

**Article 3 (and Annex II)**

In the Annex II, point 1, letter a) refers just to article 4 letter a) of the Regulation 2016/1624. However in the article 2, point 3) of this draft regulation the European integrated border management is defined as whole Article 4 of Regulation 2016/1624. The goal of this regulation defined in Article 3, paragraph 1 is „*ensuring strong and effective European integrated border management at the external borders*" as such, the Annex II cannot limit the goal of the regulation set up in the Article 3, para 1. **The Czech Republic requests to redraft the text of the Annex II to refer to Article 4 as a whole, not just to letter a)**.

**Article 4**

The Czech Republic welcomes the aim of the EC to clearly define supportable activities and that based on the creation of separate instrument for financing customs equipment it is necessary to exclude this equipment from BMVI. However the CZ does not agree with wording of the Article 4, paragraph 3, letter c), point 2 „*purchase, maintenance or upgrading of equipment, excluding means of transport, of which one of the aims or effects is control of goods;*" This formulation is too strong and excludes practically any equipment used by border guards during border check. **The CZ suggests deleting this point.** Points 1 and 3 sufficiently prevent possible overlaps with instrument for customs equipment.

**Article 10**

The CZ does not agree with wording in paragraph 2. The amount under 1 b) should be always distributed among member states. If any of the member states are not eligible for receiving additional allocation, the allocation should be redistributed among remaining member states. The CZ does not support to redistribute the unused amount to the envelope of the EC. The CZ suggests deleting paragraph 2.

**Article 11**

The CZ disagrees with the wording of paragraphs 6 and 7. Current wording will lead to increase of administrative burden especially in reporting phase. **The CZ demands to keep the same system as for ISF in period 2014-2020**, i.e. to report just the EU contribution and the co-financing rate to be decided by the RA (within the limits set out by this article in paragraphs 1-5). Current system is easy, transparent and we do not see any reasoning for change.

**Article 12**

Paragraph 7

The wording of this paragraph strictly force the MS to address the deficiencies following from Schengen evaluation by the BMVI Funding. This wording does not allow to the member state to address these deficiencies by national financing which might be in some cases more efficient.

Paragraph 12

The compulsory consultation of public procurement of any operational equipment with EBCGA will mean increase of administrative burden. The CZ does understand the rationale behind this proposal however we would like to point out that even now the public procurement processes are lengthy and combined with project selection procedures and this new consultation duty, the rule of N+2 set up by CPR (Common Provision Regulation) might be a serious problem. The CZ suggests discussing about possible exception for BMVI from the rule of N+2.

Paragraph 14

The CZ does not see any benefit in further limiting the focus of national programmes and defining their priority focus. The aims and tools of the BMVI are clearly defined in articles 3 and 4 and related annexes II and III. The limit set up in paragraph 14 might limit specific needs of member states and might lead to inefficient use of resources on non-necessary actions. **That is why the CZ suggests deleting the first sentence of the paragraph 14**: „*Member States shall pursue in particular the actions listed in Annex IV*.“

**Annex II**

In the draft regulation establishing ISF for 2021+ the SIS II is mentioned as supportable. The SIS II can be supported also by BMVI. The CZ requests assurance that it will not cause any increase in administrative burden, especially in the reporting phase and that the principle of mixed used will not be used for projects of SIS (that it will not be necessary to split the costs for different functionalities of the system among the two funds).

# FRANCE

The delegation would first like to:

– welcome the Commission's ambitious proposal for the border management and visa instrument;

– regarding the distribution keys for the national envelopes, renew its request to the Commission to have provisional envelopes per Member State;

– ask the Commission to transmit in writing the data used to measure all the criteria mentioned in Annex I (by year), including the data on the length of the land and sea borders;

– note France's reservations regarding the arrangements for implementing the shared management of the BMVI. These arrangements effectively impose prior association, consultation and validation procedures on the Commission and the agencies in a number of strategic phases. There is a very high risk that they will slow down the adoption of national programmes and block the implementation of useful measures. In fact, the arrangements prevent the specific situations within the Member States from being genuinely considered. The participation in the national programme of other partners on the basis of the Partnership Agreement which the Commission has to approve beforehand (Article 6 of the CPR – in particular '*economic and social partners*' (*what about airport managers?)* and '*bodies representing civil society' (what about associations campaigning for the abolition of borders?*)) would present real problems for the adoption and implementation of the national programme.

**Article 1**

The delegation would ask that the working party be kept regularly updated on the development of the negotiations on the customs control equipment fund, in view of the interplay with the BMVI.

**Article 3**

The delegation would like to point out the following:

Article 3(2)(a): A European Border and Coast Guard with the powers and the human and material resources to perform the tasks required to meet this objective will have to be phased in gradually. The European Border and Coast Guard Agency will not have been phased in completely by 2020. Moreover, the national authorities must keep their role in the context of border management as well as their powers, in particular the power to refuse entry.

The delegation would like to propose rewording the objective as follows:

'supporting effective European integrated border management at the external borders implemented by the national authorities responsible for border management and by the European Border and Coast Guard as a shared responsibility of the European Border and Coast Guard Agency and of the national authorities responsible for border management, to facilitate legitimate border crossings, to prevent and detect illegal immigration and cross-border crime and to effectively manage migratory flows'.

Article 3(3): with regard to the list of implementation measures set out in Annex II to the Regulation, the delegation would like clarification as to:

- the nature of these 'implementation measures'. Do they correspond to the current national objectives under the ISF Borders and Visa instrument, which gives a breakdown of the specific objectives in the national programmes? If not, what are they and what do they entail?
- whether the list should be regarded as exhaustive.

**Article 4**

Article 4(2): The delegation would like to ask which text defines the Union priorities to which this article refers, or, in the absence of such a document, how these priorities will be defined. On this subject, it would also like to ask who will judge whether the actions are in line with these priorities, and at what stage.

Article 4(3): The delegation would like to highlight the powers the French customs authorities have with regard to border control and surveillance. As a result, a number of actions for which the French customs authorities may need a grant may have a mixed use, including customs control. The delegation would therefore like to ask that these actions (Article 4(3)(c)(2) and (3)) be eligible and that, as a minimum, those which have border control and surveillance as their objective or effect be funded by the BMVI.

Last subparagraph: the delegation would like to ask for clarification of the notion of an 'emergency situation' in which such actions may be considered eligible.

**Article 5**

We would like to ask for the following clarifications:

- whether actions implemented by the Member States in the outermost regions are eligible;
- Article 5(3): who will judge whether or not the third country's participation is necessary for the achievement of the objectives of a given action?

We would point out that vigilance should be exercised with regard to (i) measures relating to actions in third countries, which should avoid overlapping and promote complementarity, and (ii) provisions concerning third countries' access to these funds.

**Article 7**

We would like to ask how the following were determined:

- the allocation of resources between shared management and the thematic facility;
- the threshold of up to 0.52 % of the financial envelope to be allocated for technical assistance at the initiative of the Commission for the implementation of the instrument.

**Article 8**

We would like to ask for clarification on the following points:

- Article 8(1): the proportional allocation envisaged for each type of management of the thematic facility;
- Article 8(2): the concepts of, basis for and arrangements for assessing 'high added value to the Union' and 'urgent needs';
- Article 8(5): the Commission's programming strategy for the period 2021-2027, any involvement by the Council in drawing up this strategy and any arrangements envisaged for updating it;
- Article 8(8): the arrangements for involving the relevant Council bodies in the decision-making process.

**Article 10**

We would like to ask for clarification as to the implications of the inclusion of 'indicatively', qualifying the allocation.

**Article 11**

Article 11(2): we would like to ask where the specific actions envisaged for the BMVI are listed (Annex IV, or elsewhere?).

Article 11(3): we would like to ask if the reference to Annex IV means that the list covers actions which can be chosen directly by Member States and implemented in their national programmes with a 90 % co-financing rate (or does this only cover actions selected under specific actions included in the thematic facility?).

Article 11(6): we would like to ask for clarification on this provision (are we to understand that the Commission will be able to decide, for each Member State, based on its proposal for a national programme, the co-financing rate and the maximum amount applicable to each type of action? If so, what criteria would the Commission's decision be based on?). Does this mean that co-financing rates will be fixed, once, for each type of action, rather than for each action which is submitted?

Article 11(7): we would like to ask for clarification on this provision (are we to understand that the Commission will be able to decide, for each specific objective of each Member State, whether the co-financing rate is to be applied to the total contribution or just to the public contribution? If so, what criteria would the Commission's decision be based on?).

**Article 12**

We would like to ask for the following clarifications:

Article 12(1): to what extent the Member State's particular situation can be taken into account in the priorities addressed in its national programme.

Article 12(2): what the process of developing the programmes will consist in and how Frontex and eu-LISA will be associated with the process. What precise role, and what decision-making power, will the agencies have in drawing up the national programmes?

Article 12(3): what would this consultation consist in? What form would it take, and with what timescale? What criteria and methods will be applied in order to assess the components of the national programme to ensure 'consistency and complementarity of the actions of the Agency and those of the Member States' and 'to avoid double financing and to achieve cost efficiency'?

Article 12(4): what considerations will the Commission take into account in order to determine whether or not it will associate the Agency with the tasks? What would this association consist in? What form would it take, and with what timescale? What effects could it have?

Article 12(9): what would this 'cooperation' and this 'consultation' consist in? What latitude would the Member State have?

Article 12(10): for projects implemented with or in a third country, what arrangements and timescale would apply for the consultation of the Commission prior to the start of the project?

We particularly wish to highlight Article 12(12) and stress that the arrangements proposed seem complicated in the extreme, with the risk that they could undermine operational effectiveness.

We would also like the following points to be clarified:

Article 12(12): (a) with regard to the acquisition of operating equipment and compliance with the standards established by Frontex, the arrangements and time limits for verifying that such standards exist, that they are accessible and that the equipment is compliant. If these standards change during the purchase procedure, which version would apply for verifying that the equipment is compliant? (The one that was in force before the purchase procedure was launched?)

(b) the justification for such a requirement *[all operating equipment purchased by the Member States will be registered in Frontex's technical equipment pool. This goes beyond the current requirements of Regulation 2016/1624, according to which Member States' contribution to the technical equipment pool 'shall be planned on the basis of annual bilateral negotiations and agreements between the Agency and Member States'.]*

(c) the link with the exclusions for equipment used, in whole or in part, for customs control purposes. *[Member States may decide to purchase items for multi-purpose maritime operations supported by the instrument, provided that these items when operated by the relevant national authorities are involved in border surveillance operations at least 60 % of the total period of use for national purposes within a year.]* Furthermore, the minimum threshold of 60 % seems excessive for equipment that would be co-financed up to 75 %, and the condition that the equipment be used in border surveillance operations would go beyond the current requirements of Regulation 2016/1624, according to which Member States' contribution to the technical equipment pool 'shall be planned on the basis of annual bilateral negotiations and agreements between the Agency and Member States'.

(d) the point in the process from which this planning should be provided: actual acquisition of the equipment? When it is brought into operation? When the balance is paid to the beneficiary for the project concerned? As part of the annual performance report following the applicable point and for all subsequent ones until the end of the programme, even if the project is completed? *[in order to support the coherent capability development planning for the European Border and Coast Guard and the possible use of joint procurement, Member States shall communicate to the Commission as part of the reporting in line with Article 27 the available multiannual planning for the equipment expected to be purchased under the instrument.]*

Article 12(13): the standards and their application over time to co-financed projects, assuming that they may change. [Training in the field of border management carried out with the support of this instrument shall be based on the relevant harmonised and quality-assured European education and common training standards for border and coast guarding.]

Article 12(15): within this classification system, whether projects will have to be categorised under only one type of intervention, or, if they fall under several types, only one type can be selected or all of them must be. What consequences would this classification have for the project? For the national programme? For the Member State?

**Article 13**

We would like to ask for clarification on the following points:

Article 13(2): the notion of 'payment applications submitted' to meet the 10 % requirement. Insofar as many projects under this fund are multiannual, the beneficiaries will not have submitted any balance payment applications to the relevant authority in 2024, nor any interim payment applications to the Commission aside from advances and any payments on account.

Article 13(3): how and to what extent the progress made in achieving the milestones of the performance framework and identified implementation shortcomings will be taken into account. Furthermore, will the Commission allocate more funds from the thematic facility (through specific actions, Union actions, etc.) to Member States that have met their objectives as a kind of 'reward' and/or through a 'penalty' system, or will it do the opposite and give a preferential allocation to all Member States that are behind in order to help them catch up?

**Article 14**

We would like a list of the specific actions envisaged for the BMVI.

**Article 15**

We would like to ask for clarification on the following points:

Article 15(2): the basis for setting 30 % of the allocated amount as the maximum to be used for operating support in the national programme *[in the ISF Borders and Visa instrument, the maximum for operating support is currently 40 %]*.

Article 15(4): the scope of the consultation of the Agency; the specific arrangements for assessing operating support needs.

**Article 23**

We would like to know if a Member State could classify an action as 'emergency assistance' in its national programme and award exceptional co-financing up to 100 %.

**Annex II**

We would like clarification as to:

- the nature of these 'implementation measures'. Do they correspond to the current national objectives under the ISF Borders and Visa instrument, which gives a breakdown of the specific objectives in the national programmes? If not, what are they and what do they entail?
- whether the list should be regarded as exhaustive.

**Annex IV**

We would like to know whether the actions listed in Annex IV are necessarily part of a selection under specific actions, or whether they can also be included by Member States in their national programming and thereby benefit from 90 % co-financing.

**Annex VI**

We would like to know whether, within this classification system, projects will have to be categorised under only one type of intervention, or, if they fall under several types, only one type can be selected or all of them must be. What consequences would this classification have for the project? For the national programme? For the Member State?

**AOB**

We would like to know if the comments and requests for clarification regarding the recitals will be addressed at a future ad hoc working party meeting.

# GERMANY

**Recital 9**

- The following sentences should be inserted as sentences two and three:

  "The instruments stipulated in this Regulation, to the extent that they are relevant for exercising basic rights, must be implemented in accordance with applicable law. The Regulation shall not affect the principle that public measures require a separate legal basis."

**Recital 15**

- The following sentences should be inserted as sentences two and three:

  "The instrument stipulated in this Regulation, to the extent that it is relevant for exercising basic rights, must be implemented in accordance with applicable law. The Regulation shall not affect the principle that public measures require a separate legal basis."

**Article 2(8) - (10) (to be newly introduced!)**

- Definition of "measures on the territory" to be added.
- Definition of "work programme" as used in Article 5(1)a)ii) to be added.
- Definition of "public service for the Union" as used in Article 15(1) to be added.

**Article 3(2)(b)**

- *supporting the common visa policy to facilitate legitimate travel in the Schengen area and prevent security risks.*
- Scrutiny reservation. Connected with new FRONTEX Regulation. No shared responsibilities. Member states are responsible for border management, they receive support from the Agency.

**Article 4(3)**

- Please delete lit. b) and lit. c), no. 2

  Reason: Cf. Recital 30. It should be possible to promote measures which are also intended to check goods. However, the focus should be on border policing.

**Article 5(1)(a)(ii)**

- Please explain what "work programme" is supposed to mean. The term should be defined in Article 2 (Definition of terms).

**Article 7(2)**

- The budget should be divided between shared management and thematic facility in a manner which better reflects the priorities of shared management.

  Reason: From the start of the programme, member states should be able to plan their budgets for the period to be covered by it. Long-term financial planning is important, in particular when it comes to major projects. It tends to be difficult to time the drawing of funds allocated at a later date. Certain project steps need a lot of time and must therefore be planned well ahead, such as the specification of services, procurement procedures, the development/construction/implementation of projects (for boats and ships, for instance, the period is approximately 18 months). Experience shows that it is difficult to find suitable project partners when it comes to spending large sums of money granted under the "thematic facilities" towards the end of the period covered by the programme. In addition, it would be better if the EU, together with member states, set out thematic conditions for funds to be granted under "thematic facilities" as soon as the budget period begins to run, as has been the case in the current budget period.

**Article 8**

- Section 1:

  What are the criteria to be used to allocate the funds to the individual components?

- Subsection 2:

  Who would define "*high added value*" and "*urgent needs*"? How would Union priorities be agreed, and who would be involved?

- Subsection 6, third sentence (to be newly introduced!)

  Addition: *Member states shall be involved in drawing up financial decisions.*

- Subsection 8:

  How would decisions concerning the period of validity and coverage of financial decisions be taken?

**Article 11**

- General scrutiny reservation concerning Article 11(2) et seqq.

**Article 12**

- Subsection 3:

  *It shall consult the European Border and Coast Guard Agency, and, where appropriate, eu-LISA, on the draft programmes with a specific emphasis on the activities included under operating support ~~in line with Article 3(2)(a)~~ to ensure consistency and complementarity of the actions of the Agency and those of the Member States regarding border management as well as to avoid double financing and to achieve cost efficiency.*

  Explanation:
  It may be necessary to involve eu-LISA, as stipulated in subsections (3) and (4), because it may also be concerned.

  Frontex's role will depend on new FRONTEX regulation; we therefore make a scrutiny reservation.

- Subsection 10:

  *Whenever a Member State decides to implement projects with or in a third country with the support of the instrument, the Member State concerned shall ~~consult~~ contact the Commission prior to the start of the project and shall jointly agree on the measure in order to discuss synergies and avoid double funding.*

  To be clarified:
  What is the Commission's aim, and how would the consultation procedure work from the Commission's point of view? Situations should be avoided where member states depend on the Commission with regard to measures to be taken in third countries.

- Subsection 12:

  General scrutiny reservation with regard to new FRONTEX Regulation
  As a general rule, we understand that interoperability needs to be taken into account; however, national needs always have priority. If, when purchasing equipment, the Agency's specifications can be implemented, this will be duly taken into account.
  lit b)
  The Commission should clarify what "large-scale" would mean.
  lit c)
  The issue of the right to veto with regard to making these assets available still needs to be clarified.
  lit d)
  What consequence does this have for national purchases? Delays must be expected. FRONTEX should have a long-term procurement plans, and should join member states in their procurement procedures, where necessary.

- Subsection 13:

  *Training in the field of border management carried out with the support of this instrument shall be based on the relevant harmonised and quality-assured European education and common training standards for border and coast guarding, provided these are in place.*

- Subsection 14:

  *Member States shall pursue in particular the actions listed in Annex IV. To address unforeseen or new circumstances or to ensure the effective implementation of funding, theCommission shall be empowered to adopt delegated acts in accordance with Article 29 to amend Annex IV. Member states shall be involved in the procedure in an appropriate manner.*

**Article 15**

- Subsection 1:

  "*Public service for the Union*" Term should be defined in Article 2 - Definition of terms

- Subsection 2:

  Up to 40% instead of 30% to be used to finance operating support.

  Explanation:
  Use current ISF as a yardstick. We cannot see why amount to finance operating support should be reduced, because equipment and IT is already available after two funding periods. If this went ahead, some financially weaker member states might no longer be able to use the purchased equipment and IT devices for IBM and visa management. This is not in Germany's interest.

- Subsection 4:

  *Member States shall justify in the programme and in the annual performance reports as referred to in Article 27 the use of operating support to achieve the objectives of this Regulation. Before the approval of the programme, the Commission shall, following a consultation of the European Border and Coast Guard Agency and EU-LISA as regards the Agency's competencies in accordance with Article 12(3), assess the baseline situation in the Member States which have indicated their intention to use operating support, taking into account the information provided by those Member States and, where relevant, the information available in the light of Schengen evaluations and vulnerability assessments, including the recommendations following Schengen evaluations and vulnerability assessments.*

**Annex II**

**Implementing measures?**

- No. 1(a)(iii)

  Which controls would that be?

# GREECE

**Article 11**

We consider that a new paragraph should be added, that provides for the increase of the contribution from the Union budget to 100% of the total eligible costs, for Member – States that are faced with extraordinary and high migratory flows and for the period that this emergency situation lasts.

**Article 13**

In par. 2, which states that "*If at least 10 % of the initial allocation of a programme referred to in Article 10(1)(a) has not been covered by interim payment applications submitted in accordance with Article 85 of Regulation (EU) No …/… [CPR], the Member State concerned shall not be eligible to receive the additional allocation for its programme referred to in paragraph 1*", we believe that the percentage required (10%) is considerably high and ought to be decreased (up to 3%), or alternatively, to replace the term "interim payment applications" with the term "signature of contracts/ legal commitments".

**Article 15**

In par. 2, it is indicated that the percentage for the finance of operating support has decreased to 30% (instead of 40% that was provided by ISF regulation (EC) 515/2014 – article 10). We strongly believe that this percentage should not be decreased (in contrast, we would suggest an increase up to 50%), since the needs for operating support of M-S are already significant, and the current percentage (40%) has not been adequate to meet the requirements of the final beneficiaries (Hellenic Police, Hellenic Coast Guard, Ministry of Foreign Affairs).

Moreover, we would suggest that par. 4 is omitted, given that the need for operating support cannot be directly related to the achievement of the objectives of the regulation, since it is intended for support and in order to sustain the equipment and infrastructures used by a Member – State for the protection of its external borders. Additionally, the article states that "*Before the approval of the programme, the Commission shall, following a consultation of the European Border and Coast Guard Agency as regards the Agency's competencies in accordance with Article 12(3), assess the baseline situation in the Member States which have indicated their intention to use operating support taking into account the information provided by those Member States and, where relevant, the information available in the light of Schengen evaluations and vulnerability assessments, including the recommendations following Schengen evaluations and vulnerability assessments.*", without clarifying the consequences of this assessment. For example, will the EC be able to assess that a Member-State does not qualify for the grant of operating support, even though it was included in its Programme? We consider that each Member – State should be responsible for identifying its needs, which will in turn be communicated through the programme and, if they are eligible under the instrument's scope of support, should then be financed.

**Annex II**

Regarding par. 1 (a) “Implementation measures”, our view is that par. 3 (biii) of Article 3 of the Regulation 515/2014 should be included, according to which, the fund should contribute to the following operational objective: “any measures also contributing to the prevention and fight against cross-border crime at external borders relating to the movement of persons, including trafficking in human beings and human smuggling”, since it is more general and can cover a larger number of cases.

**Annex III**

Lastly, we consider that par. 1 (a) “Scope of support” should be replaced with the following: «infrastructures, buildings, systems and services required at border crossing points, in hotspot areas and for border surveillance between border crossing points **and at the areas near the borderline (second control line)** to prevent and tackle unauthorised border crossings, illegal immigration and cross-border crime at the external borders, as well as to guarantee the smooth flows of legitimate travellers;”. Furthermore, a new provision should be added, as regards to the actions, equipment and surveillance means necessary for the implementation of the EUROSUR Regulation (EC Regulation 1052/2013).

# HUNGARY

**Article 3: Objectives of the instrument**

We do not agree with paragraph 2 (a) that in the framework of the policy objective set out in paragraph 1 the instrument should facilitate the effective management of migratory flows. We firmly believe that in order to guarantee the internal security of the Union and to reduce the migration pressure on the EU, the objectives of the Integrated Border Management Fund should primarily be designed to stop and not manage irregular migratory flows. Therefore, we propose to amend the text according to the aforementioned objective.

**Article 4: Scope of support**

Concerning the definition of the scope of the support and in accordance with the findings made in Article 3, we disagree with the proposal in paragraph 3 (a) of the Article that actions referred to in paragraph 1(a) of Annex III at those internal borders at which controls have not been lifted yet shall not be eligible.

The experiences of the current financial period show that it is also necessary to provide financial support, to limited extent, for the aforementioned border sections in order to maintain and develop the infrastructure of existing border crossing points but also to operate them and to support border surveillance task. For this reason, it is necessary to draft a detailed regulation which, even within narrower framework, provides financial support for these border sections, thus guaranteeing the smooth flow of legitimate travelers and the more effective action against irregular immigration.

**Article 7: Budget**

With regard to the Integrated Border Management Fund, we disagree with the proposed financial envelop in Article 7 that 60% of the financial allocation of the implementation period 2021-2027, and 40% for the Thematic Facility. In our view, on the contrary, much more of the available resources should be devoted to national programs. Member States have to face different challenges because of their various geographic conditions and other circumstances, so the priorities may vary from one Member State to another. For this reason, we consider the 80-20% distribution key to be acceptable.

**Article 8: General provisions on the implementation of the thematic facility**

In Article 8 (3) to (4), the Commission refers to the possible ineligibility of the measures financed by the Thematic Facility in the case where, according to Article 258 TFEU, the Commission considers that a Member State has failed to fulfil its obligations under the Treaties and has issued a reasoned opinion on the matter. It is proposed to revise this provision since a Member State's failure to fulfil its obligations must be established by the Court of Justice of the European Union following the proper procedure, and in this connection the Commission's preliminary opinion can not be relevant. Nor does the regulation reveal how the area affected by the infringement and the measure that is not eligible can relate to each other. Please illustrate the above with examples.

**Article 12: Programmes**

In our point of view, the European Border and Coast Guard Agency has a too excessive role in the provisions of Article 12 concerning. We cannot support measures which would withdraw competencies from Member States for the benefit of the Agency during the establishment and review of their national programs. In case of Commission's preliminary consultations on security issues related to planned projects by Member States in third countries, it is unclear when, in what form and how the consultations will be implemented.

**Article 13: Mid-term review**

We are concerned that evaluations should be completed by 31 March 2024, as the implementation period of the programs is much longer (until 30 June 2029) than the programming period. Based on the experiences of the current programming period, such an early implementation of the evaluations cannot give an objective picture of the situation in the Member States as the outputs and results of the projects will be available in a later phase; therefore any transfers deemed necessary will not be well-founded. In view of this we suggest that the date should be postponed to at least one year later.

**Article 14: Specific actions**

Concerning specific measures, it is recommended to clarify the rules on procedure of funding.

**Article 15: Operating support**

We disagree with the proportion of the operating support in Article 15, which foresees 10% less allocation than the previous period (30% instead of the current 40%) because this reduced rate does not guarantee the possibility of redeployment of financial resources by the Member States based on their own needs and autonomous decision making process. Furthermore, we consider that the European Border and Coast Guard Agency has a too excessive role in that context.

It is also necessary to clarify the provision in paragraph 3. According to the provision, Member States using operating support shall comply with the Union acquis on borders and visas.

# LATVIA

**Article 1**

Latvia can support the wording proposed by the Commission.

**Article 2**

Latvia can support the wording proposed by the Commission.

**Article 3**

Latvia has scrutiny reservations in regard to this paragraph until amendments to the FRONTEX Regulation have been adopted. In addition, Latvia seeks clarification on the practical cooperation mechanism between the European Border and Coast Guard Agency and the authorities responsible for border management, as provided for in the text of the target set out in paragraph 2 (a).

**Article 4**

Latvia supports the proposed principle of emergency in cases of non-eligible actions referred to in paragraph 3, but we ask to explain the practical implementation of this paragraph, and whether a simplified procedure is foreseen for the application of this paragraph.

**Article 5**

Latvia can support the wording proposed by the Commission.

**Article 7**

Latvia seeks clarification on technical assistance beneficiaries and financing source specified in Sub-paragraph 3.

**Article 8**

In order to ensure the availability of the thematic component also on the initiative of the Member States, Latvia proposes to add paragraph (1) (d) with the following wording:

(d) Priority proposed by a Member State with high EU added value.

**Article 9**

Latvia can support the wording proposed by the Commission.

**Article 10**

Latvia can support the wording proposed by the Commission.

**Article 11**

Latvia can support the wording proposed by the Commission.

**Article 12**

Latvia has scrutiny reservations in regard to this paragraph until amendments to the FRONTEX Regulation have been adopted.

**Article 13**

Taking into account the fact that the results of the mid-term evaluation are an essential condition for the next allocation of money, Latvia considers that the period for the mid-term evaluation set out in the article is too early and should be determined one year later.

**Article 14**

Latvia can support the wording proposed by the Commission.

**Article 15**

Latvia can support the wording proposed by the Commission.

**Article 16**

Latvia can support the wording proposed by the Commission.

**Article 23**

Latvia asks for clarifications on the source of grants financing provided for in paragraph 2, and the situations in which such granting of decentralised agencies could take place. Latvia seeks clarifications on the principles according to which emergency assistance can be schedules in the MS National programmes in order to comply with the provisions of paragraph 3 of this article?

**Annex II**

Latvia asks for the examples of technical and operational measures set forth in paragraph 1 (a) III.

**Annex III**

Latvia asks for clarification or examples of the operating support referred to in point 1 (k) of the Annex for the implementation of the BMVI.

**Annex IV**

Latvia can support the wording proposed by the Commission.

**Annex VI**

Latvia can support the wording proposed by the Commission.

**Annex VII**

Latvia can support the wording proposed by the Commission.

# MALTA

## 1 General

Malta would like to put forward the following comments on Article 3, Article 7, Article 8, Article 10, Article 12, Article 13, Article 15, Article 19, Article 24, Article 26, Article 27, Annex I, Annex III and Annex VII. These are Malta's preliminary comments and we reserve the right to comment further on the text during the article by article discussions that will continue in the coming weeks.

## 2 Specific Comments

### Article 3

Malta seeks clarification on the implications of paragraph 2(a) of Article 3, particularly to understand to what extent the support through the BMVI will be linked to supporting the shared responsibility of the EBCG Agency (Frontex) and Member States. In this context, further clarity is needed to see if Member States will be required to register equipment acquired under the BMVI in Frontex's equipment pool and if so what this would mean in practice. We believe that the BMVI should support national authorities responsible for border management independently of the EBCG Agency (Frontex).

With regard to the registration of equipment in the Frontex equipment pool, we prefer to maintain the current system whereby the obligation to register in the Frontex equipment pool will be required only for the equipment acquired with an increased co-financing rate, under specific actions where the conditions are laid out. In addition, we believe that the regulation should also take into account existing bilateral negotiations in relation to the registration of equipment and that the proposed regulation should not go beyond such negotiations as this may create additional pressures on the capacity of national authorities to be able to address their obligations for border control.

With regards to the policy objective of supporting the common visa policy in paragraph 2(b), we consider that discussions should also take into account supporting legislation in the area of migration and travel to ensure a holistic approach towards facilitating legitimate travel and preventing migratory and security risks.

### Article 7

Malta welcomes the increased financial allocation for Border management at EU level. On the other hand, we note that the share allocated to national programmes was maintained at the same level as that of the current programme, whereas the financial allocation for Agencies appears to have been increased.

Whilst we agree that financial resources in relation to border management should be distributed among Member States and Agencies and we acknowledge the supporting role of Frontex; we are convinced that there has to be a more substantial effort in strengthening the border management capacity of Member States. We would also like to highlight that the primary responsibility to control borders lies with the Member States and that in fulfilling this role, there has to be adequate resources allocated for this purpose. In this context, we believe that the share of resources allocated to national programmes should be increased.

**Article 8**

Whilst we welcome the approach for flexibility proposed through the thematic facility, further information is required to understand how the thematic facility will be implemented in practice in particular taking into account the different management modes that will be used to implement the thematic facility. In addition, we would like to understand better the rationale behind the bi-annual programming referred to in the Commission fiche 3 on the Thematic Facility for Union actions and specific actions; and how programming for emergency actions will take place considering the immediate responses required in these cases.

With regards to the process to identify the priorities to be covered in sub-paragraph 2 we would like to know to what extent Member States will be involved in this process as we believe that the priorities should be discussed and agreed to in conjunction with the Member States.

**Article 10**

Malta would like a clarification concerning how the new regulation will provide support to "interoperability and IT systems" seeing that under the new regulation there is no specific allocation for this purpose unlike the current ISF Border regulation where an additional allocation, over and above the allocations for national programmes[1], is specifically provided for. We consider that the current approach should be maintained in the new regulation.

Concerning paragraph 2, in accordance with the comments under Article 13(2) on the scope of the mid-term review, we believe that paragraph 2 should be deleted. We believe that any funds allocated for the mid-term review would be allocated to national programmes and not the thematic facility.

**Article 12**

In terms of programming, when it comes to the role of the Agencies as set out in paragraphs 2 to 6, we would like to emphasise the importance to avoid additional layers at the programming, monitoring and evaluation levels to ensure more effective and efficient programming and implementation.

With regards to paragraph 12(b), Malta believes that further clarification is required to understand the rationale behind this provision. As stated under Article 3 above, we are concerned with the approach proposed by the Commission to register all large-scale operation equipment for border management in the technical pool of the EBCG Agency. We believe that the primary responsibility of border control lies within the Member States and that this should be reflected in the scope of the regulation. In this context, we believe that the Commission should not take a blanket approach and parameters for the registration of such equipment in the technical pool should be made clear. We consider that only equipment acquired with increased co-financing under the thematic facility and specifically with the objective of increasing the operational capacity of the EBCG Agency should be subject to this obligation whilst ensuring consistency with the EBCG Regulation. We also consider the existing bilateral negotiations should be respected and that the funding regulation should not go beyond such negotiations.

[1] Reference article 5(3)(f) of Regulation (EU) No 515/2014.

**Article 13**

We consider the conditionality proposed under sub paragraph 2 of this Article as too restrictive and that it will constitute excessive burden on Member States, which may result in the unnecessary loss of funds. In this context, Malta believes that sub paragraph 2 on the percentage which needs to be reached to be eligible to receive the national allocation (10%) should be deleted as the scope of the mid-term review should not be to add undue burden on national authorities but to re-adjust national programmes in order to address any possible shift in needs.

With regards to sub-paragraph 3, given that the nature of the sector is very dynamic and that the needs and responses can change very quickly, we are not convinced about the application of the performance framework to this Fund because it will not be practicable and may result in the unnecessary loss of funds.

**Article 15**

We consider that further flexibility is required for operating support allowing increased opportunity to focus on operational costs, training and maintenance of assets. In this regard, having a maximum threshold is considered as too restrictive. In the spirit of flexibility, we believe that there is scope to leave the decision on the amount to be used for operating support at the discretion of the Member State.

**Article 19**

With regards to blending, we consider that the decision for blending operations should be voluntary and at the discretion of the Member State. From an implementation point of view, we would like further information, including practical examples, of possible blending operations under these funds.

**Article 24**

When it comes to complementary and combined funding, we believe that this should be voluntary and that such decisions should be taken at the discretion of the Managing Authority. From an implementation point of view, further clarification is required to understand the implications of sub paragraph 2 in relation to the seal of excellence certification. We would also like further clarification, including practical examples, to understand how complementary and combined funding can work in practice under the three funds.

**Article 26**

A clarification is required concerning the scope of this article in the fund specific regulation taking into account the applicability of Article 40 of the new CPR to the new proposed regulation when it comes to the preparation of a midterm evaluation by the Commission.

**Article 27**

Further clarification is required to understand the requirement to prepare an annual performance report for the BMVI [and other Home affairs funds] when this requirement was removed for the Cohesion funds. In the spirit of simplification, and in order to minimize administrative burden, we consider that a consistent approach should be applied across all funds falling under the new CPR.

**Annex I**

Malta is currently evaluating the Commission's proposed allocation criteria and, in this regard, we would appreciate it if the Commission could provide further information concerning the data used for the calculations of the national programmes.

**Annex III**

Malta would like a clarification concerning how "support to interoperability and IT systems" will be provided for under the new regulation. In line with our comments under Article 10 on Budgetary Resources, we consider that the current approach of having a separate allocation over and above the allocations for national programmes should be maintained in the new regulation.

**Annex VII**

Further clarification is required concerning the eligible actions for operating support in particular to understand the implications of the last sub-paragraph under (a). Our understanding is that operating support can be used by all Member States and that, in the case of a host Member State of a Frontex Operation, that Member State can also use this Fund to cover the costs it incurs in relation to those operations.

# POLAND

**Article 7.2**

With reference to the art. 7.2 we recommend a discussion on the allocation to the programmes implemented under shared management and to the thematic facility. The Member States should have more autonomy as they effectively identify their needs. We recognize the need of reducing the financial resources that are to be allocated to the thematic facility.

**Article 12. 12 a**

In our opinion the competences of the European Border and Cost Guard Agency need further clarification. The necessity of consulting the Agency before launching the equipment purchase procedure may significantly extend tender procedures.

**Article 13(2)**

MINIMUM PROPSAL:

If less than 10 % of the initial allocation of a programme referred to in Article 10(1)(a) has been covered by payment applications submitted in accordance with Article [85] of Regulation (EU) No…/…[CPR], the Member State concerned shall not be eligible to receive the additional allocation for the programme referred to in paragraph 1.

FULL PROPOSAL (same words, but in another sequence, deleted word “concerned”):

The Member State shall not be eligible to receive the additional allocation for the programme referred to in paragraph 1 if less than 10 % of the initial allocation of a programme referred to in Article 10(1)(a) has been covered by payment applications submitted in accordance with Article [85] of Regulation (EU) No…/… [CPR].

# PORTUGAL

At the time of the a.m. meeting, and considering the partition of 60% of the overall budgetary resources for Shared Management / National Programs; and 40% for the Centralised Management / Thematic Facilities, many Delegations representing several Member States have suggested a significant decrease on the amount of resources allocated to the Thematic Facilities.

The European Commission, in turn, has justified this proposal by reinforcing its intention to guarantee two central aspects:

- The allocations foreseen for the Thematic Facilities respect a primary objective to serve as a reinforcement of the allocation to be attributed to the National Programs (namely, through Specific Actions and Emergency Assistance);
- The allocations foreseen for the Thematic Facilities seek to respond to unforeseen challenges and, in particular, to the future entry into force of new technological or operational systems, relevant for the area of integrated border management and visa, which cannot be foreseen at the current time – and, thus, entailing a possible reinforcement of the allocations of the National Programs through the Top Ups, made by the European Commission, to certain policy areas.

Without prejudice to the justifications presented by the European Commission, Portugal is convinced of the need to guarantee further clarity, transparency and predictability in the financial management to be made through Shared Management.

Portugal is also convinced of the need to develop all possible efforts in order to avoid the complex and burdensome exercises, taking place under the current AMIF and ISF, for each revision of the National Programs. As a matter of fact, there have been years where two or even three revisions of the National Programs, per Fund, were imposed, by the European Commission, on the Member States, implying an extra administrative burden, with direct implications on the allocation of human resources and time spent to respond accordingly.

Henceforth, Portugal is of the view that, bearing in mind the policy objectives set out by the European Commission above, the same results could be reached, with a significantly lower administrative burden, as well as with a clearly increased amount of transparency and predictability, if the following changes were made:

- The 40% of the financial allocation to be attributed, under the IBMV, to the Thematic Facilities (art. 7, n. 2, b)), should decrease to 30%;
- The remaining 10% of the financial allocation, coming from the Thematic Facilities (current proposal) should increase the 60% of the allocation for Shared Management / National Programs (art. 7, n. 2, a)).
- Nonetheless, these extra 10%, coming from the Thematic Facility, should be added to the 10% already left, under the European Commission's initiative, to be allocated in the context of the Mid Term Review – as foreseen in art.s 10 and 13 of the current Regulation proposal – which would now amount to 20% of budget left for the review taking place in 2024.

In case there is an agreement from the Presidency, from the European Commission, as well as that of the remaining Member States, on this proposal, the subsequent adjustments should be made to the following articles:

- Art. 7 (calculations over n. 2 a) and b));
- Art. 10 (calculations over n. 1 a) and b));
- Art. 13

Portugal is of the view that these changes would much favour all parties involved, and, without doubts, clearly contributing to the concretion of the objectives indicated by the European Commission as regards to channelling the allocations of the Thematic Facilities to the National Programs of the Member States.

The concretion of this proposal would, simultaneously, constitute a significant incentive given to the Member States in order to further engage in guaranteeing a swift and anticipated financial consumption of the Fund, with the purpose of having positive indicators to serve as the basis for the Mid Term Review exercise.

# ROMANIA

Romania has an overall positive opinion on the proposal and takes note of the efforts of the Commission to upgrade the multiannual financial framework taking due account of the experience gathered in the use of the previous legal framework. The financing instrument is a comprehensive one, taking into account the needs of the Member States relating to recent developments and future challenges i.e. systematic checks, interoperability-related issues, vulnerability assessment, hotspot approach etc.

As requested during the meeting on 17 September, please find below the comments of the Romanian delegation on the text.

Regarding the **definitions included in article 2**:

RO considers that the definition of *"blending financing"* is cumbersome and would appreciate a more clearer or simplified one, so that it would be easy to understand its full extent.

In addition, the use of the wording *"work programme"* in art. 3 and 8 (*not used by the current Regulation no. 515/2014*, therefore a novelty) would require a definition.

In the same view, the use of the wording "*emergency situations*" requires a definition The current regulation no. 515/2014 defines it in art. 2 letter f). RO proposes to reintroduce it and extend the definition to also cover other situations, such as for instance, where the late adoption of implementing acts relating to adopted European legislation or delays in rendering operational of European systems as planned have a negative impact over the implementation of subsequent measures at national level. To this end, RO proposes the following text: "***emergency situation means a situation resulting from an urgent and exceptional pressure where a large or disproportionate number of third-country nationals are crossing or are expected to cross the external border of one or more Member States, ~~or~~ any other duly substantiated emergency situation requiring urgent action at the external borders or objective situations leading to the risk of not implementing the instrument under the ongoing financial framework at national level."***

As for the proposed definition for ***external borders*** in point 4, RO has an **overall preference for the use, in proposals relating to JHA area, of references to definitions described in other (general) pieces of legislation (i.e. Schengen Borders Code).**

In the particular case of the current proposal under analysis, although we fully understand (and welcome) the idea of changing the wording "*temporary external borders*" with "*internal borders at which the controls have not been lifted yet*", RO would like to use this opportunity to **propose using *external borders* and *internal borders at which the controls have not been lifted yet* independently and/or concurrently**, according to the situation. Thus, the definition of external borders would be "***external borders mean external borders as defined in Article 2(2) of Regulation (EU) 399/2016",*** and *internal borders at which the controls have not been lifted yet* would have the meaning proposed by COM in point 7, while **throughout the text of the proposal, both terms would be used together** (where applicable).

This solution would avoid defining external borders as including internal borders (*even if the text refers only to those at which the controls have not been lifted yet*) because the regime of the borders with the neighboring EU countries often lead to lengthy discussions relating to the interpretation of the EU legislation. At the same time, RO would like to remind that, even though the definitions are prescribed for the sole purpose of this regulation, the past experience shows that there were instances where the included definitions were used also for other purposes[2].

Another reason (if not the main) for requesting for the use of "*external borders*" and "*internal borders at which the controls have not been lifted yet*" together throughout the text lays in **the necessity, for the Romanian authorities, to have certitude with respect to the way of calculating, for instance, the length of the borders to be taken into account for the calculation of the 70% for the length of external land and external sea borders** mentioned in Annex I points 2 and 7, namely if it will (or not) include the length of internal borders for which the controls have not been lifted yet.

In the same vein as above, RO suggests that the definition of ***external border section*** in point 5 should be made through references to the legal general framework, as follows: (*5) external border section means the* ***external border section*** ~~*whole or a part of the external land or sea border of a Member State*~~ *as defined by* ***art. 3 f) of*** *Regulation (EU) No 1052/2013*[3]. This approach would ensure that, no matter the evolution of discussions on the definition included in art. 2 point 11[4] of the proposal of a Regulation repealing Regulations no. 1624/2016 and 1052/2013 (COM(2018) 631 final of 12.09.2018), the reference stands correct.

**Article 3**

RO notes that this article is linked to the proposal regulation for EBCGA currently under discussions. A correlation between the provisions of these two proposals should be ensured. Also, RO considers that MS should be able to ensure the achievement of Fund's objectives independent of EBCGA, otherwise a risk may occur for national authorities in the procurement of equipment for their own national needs in accordance with Fund's objectives.

[2] For example, the definition of "*temporary external borders*" from Regulation no. 515/2014 was used without any connection to multiannual financial framework into the Eurosur Manual, although both RO and SI contested this use.

[3] Reference to be replaced by the [Proposal for a Regulation of the European Parliament and of the Council on the European Border and Coast Guard and repealing Council Joint Action n°98/700/JHA, Regulation (EU) n° 1052/2013 of the European Parliament and of the Council and Regulation (EU) n° 2016/1624 of the European Parliament and of the Council]

[4] 'external border section' means the whole or a part of the external border of a Member State, as defined by national law or as determined by the national coordination centre or any other responsible national authority;

**Article 4 and Annex III**

RO considers that **the non-eligibility of the actions at the internal borders at which controls have not been lifted yet should take into consideration** the long period of time since RO is awaiting a decision for the lifting of border controls at internal borders, the lack of clear perspective for reaching this objective and the situation in evolution in operational terms **and therefore lifting the current restrictions**. RO would like to recall that investments in road infrastructure approved by COM at those borders under the 2007-2013 Cross-border cooperation Programme have been made and in order to render them operational, RO found itself in the situation of deploying and investing national resources for performing border checks, including in terms of infrastructure.

Nevertheless, RO understands that investing in buildings to be later on removed would go against the principles of financial efficiency. RO could, if COM still does not agree with the above in the end, accept a solution where **some amendments to Annex III point 1a) would be made,** as follows:

- Maintaining as **non-eligible only newly build fixed elements of infrastructure**, while thus allowing mobile solutions (such as containers, for instance) to become eligible.
- **Rendering eligible the systems and services** (unclear what the latter means exactly), taking into account the obligation included in article 4[5] of the Entry/Exit Regulation no. 2226/2017 to implement the future system at internal borders at which the controls have not been lifted yet.
- **Including rehabilitation and refurbishment of buildings** used for border control (both for border checks and border surveillance) into the eligible actions at internal borders at which controls have not been lifted yet, by making specific amendments in letter b), as described below.

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[5] *Article 4: 1. The EES shall be operated at the external borders. 2. The Member States which apply the Schengen acquis in full shall introduce the EES at their internal borders with Member States which do not yet apply the Schengen acquis in full but operate the EES. 3. The Member States which apply the Schengen acquis in full and the Member States which do not yet apply the Schengen acquis in full but operate the EES shall introduce the EES at their internal borders with the Member States which do not yet apply the Schengen acquis in full and do not operate the EES. 4. Member States which do not yet apply the Schengen acquis in full but operate the EES shall introduce the EES at their internal borders as defined under points (b) and (c) of Article 2(1) of Regulation (EU) 2016/399. 5. By way of derogation from the third and fourth subparagraphs of Article 23(2) and from Article 27, a Member State which does not yet apply the Schengen acquis in full but operates the EES shall introduce the EES without biometric functionalities at its internal land borders with a Member State which does not yet apply the Schengen acquis in full but operates the EES. Where, at those internal borders, a third-country national has not yet been registered in the EES, that third-country national's individual file shall be created without recording biometric data. Biometric data shall be added at the next border crossing point where the EES is operated with biometric functionalities.*

Consequently, the text of point 3a) would become: *"**fixed elements of** infrastructure~~s~~, **and** buildings, ~~systems and services~~ required at border crossing points, in hotspot areas and for border surveillance between border crossing points to prevent and tackle unauthorised border crossings, illegal immigration and cross-border crime at the external borders **and at internal borders at which the controls have not been lifted yet**[6], as well as to guarantee the smooth flows of legitimate travellers*;"

Also, in **Annex III point 1 b)** RO considers that **the condition regarding the acquisition of equipment in accordance with standards developed by EBGCA should be eliminated** or provided as an exception in the text (especially since **the empowerment of the Agency to establish standards** for operating equipment, means of transport, and communication systems required for effective and secure border control, **does not have a connection with the EBCG Proposal**[7]**)**. In addition, this requirement is restrictive and may cause the risk of not meeting all the needs of a MS, considering their specificity, as well as the set deadlines for launching certain public procurement procedures to be delayed.

Considering the above-mentioned opinions, RO proposes the reformulation of point 1b), as follows:

*"b) operating equipment, including means of transport, **~~and communication~~** systems, **services and rehabilitation and refurbishment of buildings** required for effective and secure border control **at border crossing points, in hotspot areas and for border surveillance ~~in accordance with standards developed by the European Border and Coast Guard Agency, where such standards exist;~~**"*

As for point (1) (k) of Annex III, RO proposes that in the actions eligible for operational support detailed in Annex VII (a) (2) be completed as follows: "*(2) Maintenance or repair of equipment and infrastructure **(buildings, access roads, systems)**".*

**Article 7**

RO considers that 40% for thematic facility is excessive considering that the MS will have the responsibility for the achievement of the programme's objectives. Considering that the distribution of the Thematic Facility envelope will be decided at COM level, there is a risk of unbalanced approach towards MS. Furthermore, the unpredictability of these financial allocations or of the calendar for these allocations will have a negative impact on MS capacity for the prioritization of their national needs. Consequently, RO favors an allocation of 25% for thematic facility, thus 75% being distributed to MS.

[6] In line with RO proposal concerning the definition of external borders and internal borders at which the controls have not been lifted yet together

[7] Article 10 of the proposal refers, in points 25 and 27 only to the *establishment of common training standards* and respectively to *support the development of technical standards of equipment in the area of border control and return including for interconnection of systems and networks*;

**Article 10**

RO proposes that the financial allocations at the beginning of the implementation process to be increased by decreasing the intermediary allocations given the fact that for the latter there will be a reduced period for implementation of the projects (3 years). Moreover, large-scale projects, with an implementation period of more than 2 years, have a greater impact and added value.

**Article 11**

RO proposes rendering applicable Annex IV also for specific actions indicated in para. 2.

merging paragraphs 2 and 3 as follows: *"The contribution from the Union budget may be increased to [90 %] of the total eligible expenditure for projects implemented under specific actions* ***as provided in Annex IV.*** ~~*The contribution from the Union budget may be increased to [90 %] of the total eligible expenditure for the actions listed in Annex IV."*~~

**Article 12**

Paragraph 9

RO considers that it is more suitable that the consultation process with EBCGA upon the reallocation resources, including the financial resources for operational support, to be carried out at the level of the Commission and not at the level of the Member State. The process of developing the program starts at the level of the Member States and the involvement of the European Border Police and Coast Guard, as the case may be, of EU-Lisa is carried out from the beginning by the COM (Article 12, paragraph 2).

Paragraph 12

The requirements established before the launch of public procurement procedures for operational equipment, including means of transport and communication systems necessary to ensure effective control and security conditions at the border, namely compliance with the standards required by the EBCGA and the verification of technical specifications together with it, are restrictive and may cause the risk of not meeting all the needs of a MS, considering their specificity, as well as the set deadlines for launching certain public procurement procedures to be delayed. Moreover, the provisions of art. 12, para. 12 should be drafted in line with the provisions of the Public Procurement Directive 2014/24/EU, otherwise, a restrictive regime is being created for acquisitions to be made from the Fund, which may lead to the application of financial sanctions/corrections, both at European level, as well as at national level by the competent institutions in this respect.

Paragraph 14

RO supports the highest involvement of MS in the process therefore proposes replacing delegated acts with implementing acts and the reformulation of this point as it follows: "*Member States shall pursue in particular the actions listed in Annex IV. To address unforeseen or new circumstances or to ensure the effective implementation of funding, the Commission shall be empowered to adopt* ***implementing*** ~~***delegated***~~ *acts in accordance with Article 29 to amend Annex IV*."

**Article 13**

RO considers that the condition established at **point 2** for the additional allocations granted to MS on the mid-term review is restrictive and does not reflect the real needs of MS in relation with Instrument's objectives. In addition, we envisage the fact that this condition could affect the real performance of the programme and, also, could encourage the MS to focus on the small projects in order to achieve the established limit of 10% of the initial allocation of a programme. RO proposes to maintain the provisions related to mid-term review from the actual framework art. 8 of Regulation no. 515/2014, in order to ensure the efficiency of the Programme and also to cover the real needs of MS.

Regarding **point 3** in RO opinion the progress made in achieving the milestones of the performance framework is restrictive and will not cover all the real needs identified at the national level. Also, RO highlights the fact that the delays registered in the implementation of the current funds (the specific Regulations were adopted with 1 year delay and, consequently, the implementation started with 1 one year delay) will definitely have consequences on the implementation of the future funds.

**Article 15**

RO proposes the increase of 30% rate dedicated to Operational Support to at least 40%, because COM proposal may generate the risk of not covering all existing needs eligible under Operational Support. In the Current Regulation for ISF Borders, this envelope has 40% financial allocations.

Regarding **point 6**, RO supports the highest involvement of MS in the process therefore proposes replacing delegated acts with implementing acts and the reformulation of this point as it follows: "*To address unforeseen or new circumstances or to ensure the effective implementation of funding, the Commission shall be empowered to adopt* ***implementing*** ~~***delegated***~~ *acts in accordance with Article 29 to amend the specific tasks and services in Annex IV*."

# SLOVENIA

## CHAPTER I – GENERAL PROVISIONS

| Article Nr. | Title | Reservation YES/NO | Content of the reservation | Compromise proposal/Other comments |
|---|---|---|---|---|
| *4* | **Scope of support** | YES | Article 4 (3) (a) provides that the actions referred to in paragraph 1(a) of Annex III are not justified at those internal borders at which controls have not been lifted yet. We suggest that the actions referred to in paragraph 1(a) of Annex III are considered as justified also at those borders. | We suggest deleting point a) of Paragraph 4 (3). |

## CHAPTER II - FINANCIAL AND IMPLEMENTATION FRAMEWORK

| Article Nr. | Title | Reservation YES/NO | Content of the reservation | Compromise proposal/Other comments |
|---|---|---|---|---|
| **SECTION 1 – COMMON PROVISIONS** | | | | |
| 7 | **Budget** | / | | We ask for further clarification on the conditions for allocation of technical assistance at the initiative of the Commission for the implementation of the instrument. |
| **SECTION 2: SUPPORT AND IMPLEMENTATION UNDER SHARED MANAGEMENT** | | | | |
| *12* | **Programmes** | / | | We ask for more details about the consultation procedure with the Agencies (paragraph 3) as we are concerned this will create additional administrative burdens. |
| *14* | **Specific actions** | / | | It is necessary to lay down clear rules to be taken into account in the case of costs. |

| SECTION 3 - SUPPORT AND IMPLEMENTATION UNDER DIRECT AND INDIRECT MANAGEMENT | | | | |
|---|---|---|---|---|
| *18* | **Union actions** | / | | We ask for further clarifications of what is meant by grants, awards and public procurement. |
| *20* | **Technical assistance at the level of the Commission** | / | | With reference to Article 7 (3) and Article 8 (1), we need further clarification on the type of technical assistance. |

**ANNEXES**

| Annex Nr. | Title | Reservation YES/NO | | Compromise proposal/Other comments |
|---|---|---|---|---|
| **I.** | **Criteria for the allocation of funding to the programmes under shared management** | YES | It is not clear to which definition of the external land border the annex relates to. | We suggest a clear definition of the external borders that should include also the internal borders at which controls have not been lifted yet. |

# SWITZERLAND

## Article 5

Paragraph 4

Which constellation does the COM think about in this paragraph? Can you give examples of such consortia?

## Article 7

Paragraph 3

Is technical assistance for States also included in this article?

→ *This question is important because it does not exist elsewhere (except in art. 20) where technical aid is cited.*

Paragraph 4

Text suggestion: „Arrangements shall be made in order to specify the nature and modalities of participation by countries that are associated with the implementation, application and development of the Schengen acquis. The financial contributions from those countries shall be added to the overall resources available from the Union financial envelope referred to in paragraph 1."

→ *Important for associated states that benefit from a complementary arrangement regulating the modalities of their participation in the new funds; problematic text regarding the text's first sentence, which does not correspond with the ISF regulation, proposition to the recast of the text, Article 5, ch.7. Particular attention should be placed that the cooperative agreements of the associated states do not refer to the negotiation of complementary arrangements.*

→ *it is important that the following sentence is deleted, as such measures do not exist: '... in accordance with the relevant provisions of the association agreements…'*

Negotiations on the supplementary agreements with the associated states should start as soon as possible.

## Article 8

Explanations are awaited about the thematic mechanism.

→ *A very large margin of manoeuvre is granted to the COM since no amount is indicated for the 3 possible actions. The one for the specific shares should at least indicate a fixed amount. When evaluating the fund part-time, it should always be possible to make corrections. Such a position can be considered if other states intervene in this direction.*

**Article 10**

Paragraph 2

We suggest leaving unallocated funds in the national programs.

**Article 11**

Paragraph 7a

What ist ment by "private contributions"? These are not mentioned anywhere else in the regulation.

**Article 12**

Paragraph 5

What are the reasons for these consultations with the COM?

Paragraph 10

What are the reasons for these consultations with the COM? Can the COM prevent projects with or in a third country?

→ *It is already the case that measures in third countries can be supported under the ISF. What will change under this new paragraph? Could MS use this to finance politically sensitive measures in third countries, which the CH could then indirectly support?*

Paragraph 11

Article 20 of the Eurosur Regulation applies only to neighboring third countries. Is that also the case in the sections 10 and 11? Or can the projects and measures of interest also be carried out with non-neighboring third countries (for example, countries in North Africa)?

Paragraph 14

Does this mean that these measures have priority and take precedence over measures that are not listed in Annex IV?

**Article 13**

Paragraph 2

Section 2 can be potentially problematic for the associated states. Indeed, if the negotiation of the complementary arrangement is late, they will have difficulty in being able to respect the requirement of art. 13 ch. 2. There would thus be unequal treatment for the Associated States (this situation was presented for ISF).

→ *This would surely be sensible to propose the elimination/concrete rewording of the article as quickly as possible, in coordination with associated states, as the chances of our proposals being accepted would then be better.*

**Article 15**

Paragraph 2

The development of these IT-systems is increasingly important. Several new titles will be deployed between 2021 and 2027 and this will imply an increase in operating costs for the states. A reduction to 30% of the amounts available for projects related to the operation of IT systems runs counter to current developments.

→ *Previously it was possible to use 40% to this end.*

**Article 23**

How is emergency aid specifically financed? Will e.g. already allocated financial resources being reallocated?

**General**

Finally, Switzerland highlights the need to provide further information on the possibilities of the Commission to carry out adoptions to the annexes.