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WORKING PAPER

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From: Commission Services
To: Ad Hoc Working Party on JHA Financial instruments

Subject: Fiche 2 - Standard equipment, standard means of transport and standard facilities in the Internal Security Fund in the 2021-2027 Multiannual Financial Framework

In view of the meeting of the Ad Hoc Working Party on JHA Financial Instruments on 24 September 2018, delegations will find attached a fiche from the Commission on Standard equipment, standard means of transport and standard facilities in the Internal Security Fund in the 2021-2017 Multiannual Financial Framework.

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WORKING DOCUMENT OF THE COMMISSION SERVICES

Subject: Standard equipment, standard means of transport and standard facilities in the Internal Security Fund in the 2021-2027 Multiannual Financial Framework

1. INTRODUCTION

The Internal Security Fund is set up to contribute to ensuring a high level of security in the Union, particularly by tackling terrorism and radicalisation, serious and organised crime and cybercrime and by assisting and protecting victims of crime.

Within the policy objective, the Fund should support the strengthening of capabilities in relation to combating and preventing crime including terrorism (Article 3(2)(c)). For this specific objective, among the implementation measures listed in Annex II, financial support for acquiring relevant equipment and setting up or upgrading specialised training facilities and other security relevant infrastructure to increase preparedness, resilience, public awareness and adequate response to security is foreseen. For this purpose only, actions supported by the Fund may include the purchase of equipment, means of transport, and the setting-up of communication systems and essential security-relevant facilities.

Except for the equipment mentioned in the previous paragraph, the purchase or maintenance of standard equipment, standard means of transport or standard facilities of the law-enforcement and other competent authorities does not fall within the scope of this Fund.

It is, therefore, important to explain the notion of standard equipment, means of transport and facilities as presented in the proposal for the Internal Security Fund for the next Multiannual Financial Framework.

2. DEFINITION OF STANDARD EQUIPMENT, MEANS OF TRANSPORT AND FACILITIES

The concept of standard equipment appears in Article 4 of the proposal for the Internal Security Fund. Article 4 refers to the scope of support of the Fund. Based on Article 4(3)(b), *"actions covering the purchase or maintenance of standard equipment, standard means of transport or standard facilities of the law-enforcement and other competent authorities referred to in Article 87 TFEU"* shall not be eligible.

There is no common definition of 'standard' and it is difficult to compile an exhaustive list of eligible items, because what is considered as standard varies both over time and across the Member States. Eventually, the eligibility of an action that could be supported through the

Fund will be decided on a case-by-case in the project selection process based on the Member States' programmes.

Standard equipment, standard means of transport and standard facilities are considered as equipment, means of transport and facilities of purely national relevance and thus should not be financed by the Fund, but by the Member States national budgets. On the contrary, actions that have a clear EU added value are eligible for funding, particularly actions that have a cross-border dimension and which provide better results than national actions alone. Article 4(3)(b) of the proposed Regulation should be read in conjunction with the relevant articles of the EU Treaties governing the ISF Regulation. In particular, in recital 8 of the proposal, it is stated that the Fund should not support activities related to the essential functions of the Member States concerning the maintenance of law and order and safeguarding of internal and national security as referred to in Article 72 of the TFEU. Therefore, the notion of 'standard' should be considered in relation to point (a) of Article 4(3) "*actions limited to the maintenance of public order at national level*" and thus equipment linked to maintenance of public order should be considered as standard and not eligible.

The notion of 'standard' covers everything that is necessary for the normal, everyday work of the law enforcement and other competent authorities for example: uniforms, cars, boats, police stations and similar buildings including office equipment therein, communication means. Standard equipment for the law enforcement officer covers all the equipment (s)he needs to carry during his/hers daily tasks. Standard means of transport covers the basic police car (or scooter, bike, boat, bus, van, plane, etc.) without any additional specific police equipment on board necessary for meeting the specific objectives of the Fund. Specific police equipment does not cover navigation and communication systems (radio, phones and GPS). In case of facilities, standard facilities would mean police stations, non-specialised training centres and the office equipment therein. Equipment necessary for meeting the specific objectives of the Fund includes, for instance, equipment needed for forensics, covert surveillance, explosives and drug detection and any other specialised purpose of relevance to ISF.

In line with the last paragraph of Article 4(3), there is an exception foreseen where an emergency situation occurs. Emergency situation is defined in the Article 22, under emergency assistance, as a "*situation resulting from a security-related incident or newly emerging threat within the scope of this Regulation which has or may have a significant adverse impact on the security of people in one or more Member States*" (Article 22(1)). Where an emergency situation occurs, purchase or maintenance of standard equipment, means of transport or facilities may be considered eligible.

3. MAXIMUM CEILING FOR INVESTMENTS IN EQUIPMENT, MEANS OF TRANSPORT AND FACILITIES

The Fund shall in particular support the actions listed in Annex III, which offers a non-exhaustive list of possible actions. Although equipment, means of transport and facilities are included in this list of actions, there is a maximum ceiling for these investments. This ceiling is proposed to direct investments into activities with a high EU added value and a cross-border dimension, for example the development and maintenance of interoperable IT systems, joint investigation teams, joint operations and trainings of law enforcement officers, and to avoid excessive investments in equipment by the EU budget.

In Article 12(4), the maximum ceiling for investments in equipment, means of transport and security relevant facilities is set at 15% of the Member States' programme allocation. As standard equipment is not eligible under the Fund, these investments will go towards financing specialised equipment, means of transport and facilities such as: specialised protective equipment for law enforcement officers to deal with CBRN-E, law enforcement vehicles with specialised equipment on-board (e.g. night-vision cameras and forensics), specialised training facilities, CCTV systems, radars for surveillance and IT hardware for EU IT systems (e.g. Prüm). Since IT hardware is equipment it falls within this ceiling of 15%, whilst investments in IT software, maintenance of equipment and training for the use of IT systems, are not limited by the threshold of 15%.

In duly justifies cases, this ceiling can be exceeded. This should be decided on a case-by-case basis when approving and revising the Member States' programmes. Possible justifications could be actions addressing newly emerging security threats or actions supporting new policy initiatives with high EU added value. Example of a justified case from the current programming period is actions implementing the PNR Directive, such as setting up and equipping the national passenger information units.

4. CONCLUSION

Within the meaning of Article 4(3)(b), the Internal Security Fund should only cover equipment that has a high EU added value and is additional to the equipment used by the law enforcement authorities in carrying out their everyday functions within a maximum ceiling of 15% of the programme allocation. The programming stage of the Fund is a crucial stage in this process in deciding what will be funded.