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Subject: Proposal for a Regulation of the European Parliament and of the Council
establishing, as a part of the Internal Security Fund, the instrument for financial
support for external borders and visa
- *Outcome of Coreper on 5 December 2012*

1. On 5 December 2012, Coreper reached a partial general approach on the draft Regulation as set out in the Annex. This partial general approach will constitute the basis for the upcoming negotiations with the European Parliament in the context of the ordinary legislative procedure.
2. The provisions with budgetary implications are excluded from the scope of the partial general approach as the decision will be taken at horizontal level. These provisions, which appear in square brackets, concern the amounts in Articles 5 and 6, Article 16 and Annex I and will be considered in line with the final amounts at a later stage.

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

establishing, as part of the Internal Security Fund, the instrument for financial support for external borders and visa

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,
Having regard to the Treaty on the Functioning of the European Union, and in particular Article 77(2) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national Parliaments,

Having regard to the opinion of the European Economic and Social Committee¹,

Having regard to the opinion of the Committee of the Regions²,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) The Union's objective of ensuring a high level of security within an area of Freedom, Security and Justice (Article 67(2) of the Treaty on the Functioning of the Union) should be achieved, inter alia, through common measures on the crossing of internal borders by persons and border control at external borders and the common visa policy as part of a multi-layer system aimed at facilitating legitimate travel and tackling illegal immigration.

¹ OJ C , , p. .

² OJ C , , p. .

- (2) The EU Internal Security Strategy, adopted by the Council in February 2010³, constitutes a shared agenda for tackling these common security challenges. The Commission's Communication of November 2010 "The EU Internal Security Strategy in Action"⁴ translates the strategy's principles and guidelines into concrete actions by identifying five strategic objectives: to disrupt international crime networks, to prevent terrorism and address radicalisation and recruitment, to raise levels of security for citizens and businesses in cyberspace, to strengthen security through border management and to increase Europe's resilience to crises and disasters.
- (3) Solidarity among Member States, clarity about the division of tasks, respect for fundamental rights and the rule of law as well as a strong focus on the global perspective and the inextricable link with external security should be key principles guiding the implementation of the Internal Security Strategy.
- (4) To promote the implementation of the Internal Security Strategy and to ensure that it becomes an operational reality, Member States should be provided with adequate Union financial support by setting up an Internal Security Fund.
 - (4a) In order to measure achievements of this Fund, common indicators should be established in relation to each specific objective of this Instrument. The measurement of the achievement of the specific objectives through the common indicators does not render the implementation of actions related to these indicators mandatory.
- (5) Due to the legal particularities applicable to Title V of the Treaty, it is not legally possible to establish the Internal Security Fund as a single financial instrument.

³ Council doc. 7120/10.

⁴ COM (2010) 673 final.

- (6) The Fund should therefore be established as a comprehensive framework for EU financial support in the field of internal security comprising the instrument established by this Regulation as well as the instrument established by Regulation .../2012/EU establishing as part of the Internal Security Fund, the instrument for financial support for police co-operation, preventing and combating crime, and crisis management. This comprehensive framework should be complemented by Regulation .../2012/EU laying down general provisions on the Asylum and Migration Fund and on the instrument for financial support for police co-operation, preventing and combating crime, and crisis management⁵ to which this Regulation should refer as regards rules on programming, financial management, management and control, clearance of accounts, closure of programmes and reporting and evaluation.
- (7) Solidarity and responsibility sharing between Member States and the Union is a fundamental component of the common policy for the management of the external border.
- (8) The Internal Security Fund should express solidarity through financial assistance to those Member States that fully apply the Schengen provisions on external borders as well as to those who are preparing for full participation in Schengen.
- (9) Participation by a Member State should not coincide with its participation in a temporary financial instrument of the Union which supports the beneficiary Member States to finance inter alia actions at new external borders of the Union for the implementation of the Schengen acquis on borders and visa and external border control.
- (10) The part of the Fund relating to external borders and visa (hereafter "the Instrument") should build on the capacity building process developed with the assistance of the External Borders Fund established by Decision No 574/2007 of the European Parliament and the Council⁶ and extend it to take into account new developments.

⁵ [OJ L ... to be completed]

⁶ OJ L144, 6.6.2007, p.22

- (11) When executing tasks at external borders and consulates in accordance with the Schengen acquis on borders and visas, Member States carry out activities in the interest of and on behalf of all other Member States in the Schengen area and thus performing a public service for the Union. To express solidarity, the Instrument should contribute to supporting operating costs related to border control and visa policy and enable Member States to maintain capabilities crucial for that service for all. Such support consists of full reimbursement of a choice of costs related to the objectives under this instrument and will form an integral part of the national programmes.
- (12) The Instrument should complement and reinforce the activities undertaken to develop operational cooperation under the aegis of the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union as established by Regulation (EC) No 2007/2004 (hereinafter referred to as "the Frontex Agency")⁷, including the new activities resulting from the amendments introduced by Regulation [...] ⁸, and thereby further reinforce the solidarity between those Member States controlling external borders in the interest and on behalf of the Schengen area as a whole.
- (13) This instrument should be implemented in full respect of the rights and principles enshrined in the Charter of Fundamental Rights of the European Union and without prejudice to the application of special provisions concerning the right of asylum and to international protection.
- (14) To ensure a uniform and high-quality external border control and to facilitate legitimate travel across external borders within the framework of the EU internal security strategy, the Instrument should contribute to the development of a European common integrated border management system, which includes all the measures involving policy, legislation, systematic co-operation, the distribution of the burden, personnel, equipment and technology taken at different levels by the competent authorities of the Member States, acting in co-operation with the Frontex Agency, with third-countries and, where necessary, with other actors, utilising, inter alia, the four-tier border security model and integrated risk analysis of the European Union.

⁷ OJ L 349, 25.11.2004, p.1

⁸ OJ to be completed

- (15) In accordance with Protocol No 5 to the 2003 Act of Accession⁹ on the transit of persons by land between the region of Kaliningrad and other parts of the Russian Federation, the Instrument should bear any additional cost incurred in implementing the specific provisions of the Union acquis covering such transit, i.e. Council Regulation (EC) No 693/2003 of 14 April 2003 establishing a specific Facilitated Transit Document (FTD), a Facilitated Rail Transit Document (FRTD) and amending the Common Consular Instructions and the Common Manual¹⁰ and Council Regulation (EC) No 694/2003 on uniform formats for Facilitated Transit Documents (FTD) and Facilitated Rail Transit Documents (FRTD) provided for in Regulation (EC) No 693/2003¹¹. The need for continued financial support for foregone fees, however, should be dependent upon the visa regime of the Union in force with the Russian Federation.
- (15a) This instrument should support measures relating to the management of external borders, to be implemented in accordance with the four-tier access control model which comprises measures in third countries, cooperation with neighbouring countries, border control measures and control measures within the area of free movement in order to prevent illegal immigration and cross-border crime inside the territory of the Schengen States.
- (16) It should include support for national measures and cooperation between Member States in the area of visa policy and other pre-frontier activities that take place prior to external border controls. The efficient management of activities organised by the services of the Member States in third countries is in the interest of the common visa policy as part of a multi-layered system aimed at facilitating legitimate travel and tackling illegal immigration into the European Union, and constitutes an integral part of the common integrated border management system.
- (17) Moreover, it should support measures in the territory of the Schengen countries as part of the development of a common integrated border management system which strengthens the overall functioning of the Schengen area.

⁹ OJ L 236, 23.9.2003, p. 946.

¹⁰ OJ L 99, 17.4.2003, p. 8.

¹¹ OJ L 99, 17.4.2003, p. 15.

- (18) The Instrument should also support the development by the European Union of IT systems which would equip Member States with the tools to manage the movement of third-country nationals across borders more efficiently and to ensure a better identification and verification of travellers ("smart borders") through the development of an EU Entry Exit System (EES) and an EU Registered Traveller Programme (RTP)¹². To this end, a programme, in line with the Information Management Strategy for EU Internal Security¹³ should be established with the aim to cover costs for the development of both the central and national components of such systems, ensuring technical consistency, cost savings and a smooth implementation in the Member States.
- (19) To address immediately unforeseen migratory pressure and threats to border security it should be possible to provide emergency assistance in accordance with the framework set out in Regulation ... 2012/EU laying down general provisions on the Asylum and Migration Fund and on the instrument for financial support for police co-operation, preventing and combating crime, and crisis management.
- (20) Moreover, in the interest of enhanced solidarity in the Schengen area as a whole, where weaknesses or possible threats are identified, notably following a Schengen evaluation, the Member State concerned should follow the matter up adequately by using resources under its programmes by priority, where applicable, complementing emergency assistance measures.
- (21) To reinforce solidarity and responsibility sharing, Member States should be encouraged to use a part of the resources available under the programmes for specific priorities defined by the Union, such as the purchase of technical equipment needed by the Frontex Agency and the development of consular co-operation for the Union.
- (22) To safeguard the application of the Schengen acquis throughout the Schengen area, the implementation of the Regulation on the establishment of an evaluation and monitoring mechanism to verify the application of the Schengen acquis¹⁴ should also be supported under this Regulation, as an essential tool to facilitate the implementation of Union policies in the area of Freedom, justice and security.

¹² Reference of the COM proposal on smart borders will be added when available.

¹³ Council doc. 16637/09

¹⁴ COM (2011) 559 final

- (23) In light of the experiences gained with the External Borders Fund and the development of the SIS and VIS, it is considered appropriate to allow for flexibility regarding possible transfers of resources between the different means of implementation of the objectives pursued under the Instrument, without prejudice to the principle of ensuring from the start a critical mass and financial stability for the programmes and the operating support for Member States.
- (24) In the same vein, the scope of the actions and the ceiling for resources which remain available to the Union ("Union actions") should be increased to enhance the capacity of the Union to carry out in a given budget year multiple activities on the management of external borders and the common visa policy in the interest of the Union as a whole, when and insofar as the needs arise. Such Union actions include studies and pilot projects to further the policy and its application, measures or arrangements in third countries addressing migratory pressures from those countries in the interest of an optimal management of migration flows into the Union and an efficient organisation of the related tasks at external borders and consulates.
- (25) Measures in and in relation to third countries supported through this Instrument should be taken in synergy and coherence with other actions outside the EU supported through Union external assistance instruments, both geographic and thematic. In particular, in implementing such actions full coherence should be sought with the principles and general objectives of the Union external action and foreign policy related to the country or region in question. They should not be intended to support actions directly development-oriented and they should complement, when appropriate, the financial assistance provided through external aid instruments. Coherence will also be sought with the Union humanitarian policy, in particular as regards the implementation of emergency measures.
- (26) Funding from the Union budget should concentrate on activities where the Union intervention can bring additional value compared to action of Member States alone. As the European Union is in a better position than Member States to provide a framework for expressing Union solidarity in border control, visa policy and the management of migration flows, and to provide a platform for the development of common IT systems underpinning these policies, financial support provided under this Regulation contributes in particular to strengthening national and European capabilities in those areas.

- (26a) The allocation of basic amounts to Member States should be established in this Regulation. The basic amount for each Member State should be calculated based on the External Borders Fund allocations for each Member State in the years 2010-2012 and dividing the figure obtained by the total of the appropriations available for shared management for these three years. The calculations were made in accordance with the distribution criteria laid down in Article 14 and 15 of Decision n° 574/2007/EC of the European Parliament and of the Council establishing the External Borders Fund.
- (26b) In the application of the Regulation, including the preparation of delegated acts, the Commission should consult experts from all Member States.
- (27) In order to supplement or amend provisions in this instrument regarding the definition of specific actions under the national programmes the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level.
- (28) The Commission, when preparing and drawing-up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and Council.
- (29) In order to ensure a uniform, efficient and timely application of the provisions on operating support laid down in this Regulation and to establish the framework for the programme on the new IT systems, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers¹⁵.

¹⁵ OJ L 55, 28.2.2011, p. 13.

- (30) Since the objective of this Regulation, namely to provide for solidarity and responsibility sharing between member States and the Union in the management of external borders and visa policy, cannot be sufficiently achieved by the Member States and can be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective.
- (31) Decision No 574/2007/EC of the European Parliament and of the Council of 23 May 2007 establishing the External Borders Fund for the period 2007 to 2013¹⁶ should be repealed.
- (32) As regards Iceland and Norway, this Regulation constitutes a development of the Schengen acquis which falls within the areas referred to in Article 1, Points A and B of Council Decision 1999/437/EC of 17 May 1999 on certain arrangements for the application of the Agreement concluded by the Council of the European Union and the Republic of Iceland and the Kingdom of Norway concerning the association of those two States with the implementation, application and development of the Schengen acquis¹⁷.
- (33) As regards Switzerland, this Regulation constitutes a development of provisions of the Schengen acquis within the meaning of the Agreement between the European Union, the European Community and the Swiss Confederation on the latter's association with the implementation, application and development of the Schengen acquis which fall within the area referred to in Article 1, Points A and B of Council Decision 1999/437/EC read in conjunction with Article 3 of Council Decision 2008/146/EC on the conclusion, on behalf of the European Community, of the Agreement¹⁸.

¹⁶ OJ L 144, 6.6.2007, p. 22

¹⁷ OJ L 176 of 10.7.1999, p. 31.

¹⁸ OJ L 53 of 27.2.2008, p. 1.

- (34) As regards Liechtenstein, this Regulation constitutes a development of the provisions of the Schengen acquis within the meaning of the Protocol between the European Union, the European Community, the Swiss Confederation and the Principality of Liechtenstein on the accession of the Principality of Liechtenstein to the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen acquis which fall within the area referred to in Article 1, Points A and B of Council Decision 1999/437/EC read in conjunction with Article 3 of Council Decision 2011/350/EU on the conclusion, on behalf of the Union, of the Protocol¹⁹.
- (35) Under the Protocol on the position of Denmark, annexed to the treaty on European Union and the Treaty on the Functioning of the European Union, Denmark does not take part in the adoption by the Council of the measures pursuant to Title V of Part Three of the Treaty on the Functioning of the European Union, with the exception of "measures determining the third countries whose nationals must be in possession of a visa when crossing the external borders of the Member States, or measures relating to a uniform format for visas". This proposal builds on the Schengen acquis, and under Article 4 of the Protocol on the position of Denmark annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, Denmark shall decide within a period of six months after the Council has decided on a proposal or initiative to build upon the Schengen acquis under the Provisions of Title V of Part Three of the Treaty on the Functioning of the European Union whether it will implement this Regulation in its national law.
- (36) This Regulation constitutes a development of the provisions of the Schengen acquis in which the United Kingdom does not take part, in accordance with Council Decision 2000/365/EC of 29 May 2000 concerning the request of the United Kingdom of Great Britain and Northern Ireland to take part in some of the provisions of the Schengen acquis and the subsequent Council Decision 2004/926/EC of 22 December 2004 on the putting into effect of parts of the Schengen acquis by the United Kingdom of Great Britain and Northern Ireland. The United Kingdom is therefore not taking part in its adoption and is not bound by it or subject to its application.

¹⁹ OJ L 160 of 18.6.2011, p. 19

- (37) This Regulation constitutes a development of the provisions of the Schengen acquis in which Ireland does not take part, in accordance with Council Decision 2001/192/EC of 28 February 2002 concerning the request of Ireland to take part in some of the provisions of the Schengen acquis. Ireland is therefore not taking part in its adoption and is not bound by it or subject to its application.

HAVE ADOPTED THIS REGULATION:

CHAPTER I

GENERAL PROVISIONS

Article 1

Purpose and scope

1. This Regulation establishes the instrument for financial support for the management of external borders and the common visa policy (hereinafter referred to as the "Instrument") as part of the Internal Security Fund (hereinafter referred to as "the Fund").

Jointly with Regulation .../2012/EU establishing as part of the Internal Security Fund, the instrument for financial support for police co-operation, preventing and combating crime, and crisis management, this Regulation establishes for the period from 1 January 2014 to 31 December 2020 the Internal Security Fund.

2. This Regulation lays down
 - (a) the objectives of financial support and the eligible actions;
 - (b) the general framework for the implementation of eligible actions;
 - (c) the resources made available under this instrument from 1 January 2014 to 31 December 2020 and their distribution;
 - (d) the scope and purpose of the different specific means through which the expenditure for the management of the external borders, and the common visa policy is financed.

3. This Regulation provides for the application of the rules set out in Regulation (EU) No .../2012 [Horizontal Regulation].

Article 2

Definitions

1. For the purposes of this Regulation the following definitions shall apply:
- (a) 'external borders' means the Member States' land borders, including river and lake borders, sea borders and their airports, river ports, sea ports and lake ports to which the provisions of Union law on the crossing of external borders apply, whether these borders are temporary or not;
- (b) 'temporary external borders' means
- the common border between a Member State fully implementing the Schengen acquis and a Member State bound to apply the Schengen acquis in full, in conformity with its Act of Accession, but for which the relevant Council Decision authorising it to fully apply that acquis has not entered into force;
 - the common border between two Member States bound to apply the Schengen acquis in full, in conformity with their respective Acts of Accession, but for which the relevant Council Decision authorising them to fully apply that acquis has not yet entered into force;
- (c) 'border crossing point' means any crossing point authorised by the competent authorities for the crossing of external borders as notified in accordance with Article 34(2) of Regulation (EC) No 562/2006;
- (d) 'Schengen evaluation and monitoring mechanism' means the verification of the correct application of the Schengen acquis as laid down in Regulation No ... /2012/EU ²⁰[X];
- (e) 'emergency situation' means a situation resulting from an urgent and exceptional pressure where a large or disproportionate number of third-country nationals cross 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 external borders.

²⁰ COM(2011)559 final

- (f) "external borders section" means the whole or a part of the external land or sea border of a Member State as defined by national legislation or as determined by the national coordination centre or any other responsible national authority for the purpose of the implementation of Regulation .../ /EU establishing the European Border Surveillance System.

Article 3

Objectives

1. The general objective of the Instrument shall be to contribute to ensuring a high level of security in the European Union.
 2. Within the general objective set out in paragraph 1, the Instrument shall contribute - in line with the priorities identified in relevant EU Strategies, programmes, threat and risk assessments - to the following specific objectives:
 - (a) supporting a common visa policy to facilitate legitimate travel, ensure equal treatment of third country nationals and tackle illegal immigration
 - (b) supporting borders management to ensure, on one hand, a high level of protection of the external borders, including by the tackling of illegal immigration and, on the other hand, the smooth crossing of the external borders in conformity with the Schengen acquis
- The achievements of the specific objectives of this Instrument will be measured through common indicators as set out in Annex IV and specific programme indicators included in national programmes.
3. To achieve these objectives, the instrument shall contribute to the following operational objectives:
 - (a) promoting the development and implementation of policies with a view to ensuring the absence of any controls on persons, whatever their nationality, when crossing the internal borders, and to carrying out checks on persons and monitoring efficiently the crossing of external borders;

- (b) gradually establishing an integrated management system for external borders, in particular by means of:
- the reinforcement of interagency co-operation between border guards, customs, migration and law enforcement authorities of Member States at the external borders;
 - measures within the territory relating to the management of external borders and the necessary flanking measures on document security and identity management;
 - any measures also contributing to the prevention and fight against cross-border crime at external borders relating to the movement of persons, including trafficking of human beings and human smuggling.
- (c) promoting the development and implementation of the common policy on visas and other short-stay residence permits, including consular co-operation;
- (d) setting up and running IT systems, their communication infrastructure and equipment supporting the management of migration flows, including surveillance, across the external borders of the Union;
- (e) ensuring the efficient and uniform application of the Union's acquis on borders and visa, including the functioning of the Schengen evaluation and monitoring mechanism;
- (f) reinforcing actions by the Member States contributing to enhancing the co-operation between Member States operating in third countries as regards the flows of third-country nationals into the territory of Member States, including prevention and tackling of illegal immigration, as well as the co-operation with third countries in these regards.
4. The Instrument shall also contribute to the financing of technical assistance at the initiative of the Member States and the Commission.

Article 4

Eligible actions

1. Within the objectives defined in Article 3, the Instrument shall support, actions in or by Member States and in particular those from the following non-exhaustive list:
 - (a) infrastructures, buildings and systems required at border crossing points and for surveillance between border crossing points to prevent and tackle unauthorised border crossings, to counter cross-border criminality and to take measures against persons who have crossed the external border illegally as well as to guarantee smooth travel flows;
 - (b) operating equipment, means of transport, and systems required for effective border control, and detection of persons, and related training;
 - (c) IT and communication systems for efficient management of migration flows across borders, including investments in existing and future systems, and related training;
 - (d) infrastructures, buildings, communication and IT systems and operating equipment required for the processing of visa applications and consular co-operation and related training;
 - (e) secondment of Immigration Liaisons Officers and document advisers in third countries and the exchange and secondment of border guards between Member States or between a Member State and a third country;
 - (f) studies, training, pilot projects and other actions gradually establishing an integrated management system for external borders as referred to in Article 3.(3) including-actions aiming to foster interagency cooperation either within Member States or between Member States;
 - (g) studies, pilot projects and actions aiming to implement the recommendations, operational standards and best practices resulting from the operational cooperation between Member States and Union Agencies.

2. Within the objectives defined in Article 3, this instrument shall support actions in relation to and in third countries and in particular the following:
 - (a) information systems, tools or equipment for sharing information between Member States and third countries;
 - (b) actions relating to operational co-operation between Member States and third countries, including joint operations;
 - (c) studies, events, training, equipment and pilot projects to provide ad hoc technical and operational expertise to third countries;
 - (d) studies, events, training, equipment and pilot projects implementing specific recommendations, operational standards and best practices, resulting from the operational cooperation between Member States and Union agencies in third countries.
3. Actions referred to in point (a) of paragraph 1 are not eligible at temporary external borders.
4. Actions related to the temporary reintroduction of border control at internal borders as referred to in the Schengen Borders Code are not eligible.
5. Actions of which the exclusive aim or effect is the control of goods are not eligible.

CHAPTER II

FINANCIAL AND IMPLEMENTATION FRAMEWORK

Article 5

Global resources and implementation

1. The global resources for the implementation of this Regulation shall be [3,520] EUR million.

2. The annual appropriations shall be authorised by the budgetary authority within the limits of the Financial Framework.
3. The global resources shall be implemented through the following means:
 - (a) national programmes, in accordance with Articles 9 and 12;
 - (b) operating support, within the framework of the national programmes and under the conditions laid down in Article 10;
 - (c) the functioning of the Special Transit Scheme, in accordance with Article 11;
 - (d) Union actions, in accordance with Article 13;
 - (e) emergency assistance, in accordance with Article 14;
 - (f) The implementation of a programme for setting up new IT systems supporting the management of migration flows across the external borders of the Union under the conditions laid down in Article 15;
 - (g) technical assistance in accordance with Article 16.
4. The budget allocated under the Instrument shall be implemented under shared management in accordance with Article 58(1)(b) of Regulation (EU) N° 966/2012 [New Financial Regulation], with the exception of Union actions referred to in Article 13, the emergency assistance referred to in Article 14 and the technical assistance referred to in Article 16(1).

The method(s) of implementation of the budget for the programme on the development of new IT systems shall be set out in the implementing act referred to in Article 15(2).
5. The global resources shall be used indicatively as follows:
 - (a) EUR [2,000] million for the national programmes of Member States;
 - (b) EUR [1,100] million for setting up the new IT systems supporting the management of migration flows across the external borders of the Union referred to in Article 15(2);

- (c) EUR [150] million for the Special Transit Scheme;
 - (d) EUR [270] million for Union actions, emergency assistance and technical assistance at the initiative of the Commission.
6. Jointly with the global resources established for Regulation No ... /2012/EU establishing as part of the Internal Security Fund, the instrument for financial support for police co-operation, preventing and combating crime, and crisis management, the global resources available for this Regulation as established in paragraph 1, constitute the financial envelope for the Internal Security Fund and serve as the prime reference for the budgetary authority during the annual budgetary procedure within the meaning of Point 17 of the Interinstitutional Agreement between the European Parliament, the Council and the Commission on cooperation in budgetary matters and on sound financial management²¹.
7. The countries associated with the implementation, application and development of the Schengen acquis shall participate in the instrument in accordance with this Regulation.
8. Arrangements shall be concluded on the financial contributions by these countries to this Instrument and the supplementary rules necessary for such participation, including provisions ensuring the protection of the Union's financial interests and the power of audit of the Court of Auditors.

The financial contributions from these countries shall be added to the global resources available from the Union budget referred to in paragraph 1.

Article 6

Resources for eligible actions in the Member States

1. EUR [2,000] million shall be allocated to the Member States indicatively as follows:
- (a) EUR [1,470] million, as indicated in Annex I;
 - (b) EUR [330] million, based on the results of the mechanism described in Article 7;

²¹ COM(2011)403 final

- (c) in the framework of the mid term review and for the period as of budget year 2018, EUR [200] million, the remainder of the available appropriations under this Article or another amount, as determined pursuant to paragraph 2, based on the results of the risk analysis and the mechanism laid down in Article 8.
2. To address properly the objectives under this Regulation in case of unforeseen or new circumstances and/or to ensure effective implementation of funding available under this Regulation, the Commission shall be empowered to adopt delegated acts in accordance with Article 17 to adjust the indicative amount laid down in point c) of paragraph 1, without though reducing the indicative amount laid down in point a) of paragraph 1.
 3. Member States which accede to the Union in the period 2012-2020 shall not benefit from allocations for national programmes under this instrument as long as they benefit from a temporary instrument of the Union which supports the beneficiary Member States to finance actions at new external borders of the Union for the implementation of the Schengen acquis on borders and visa and external border control.

Article 7

Resources for specific actions

1. Member States may, in addition to their allocation calculated in accordance with point (a) of Article 6(1), receive an additional amount, provided that it is earmarked as such in the programme and shall be used to achieve specific actions listed in Annex II.
2. The Commission, shall be empowered to adopt delegated acts in accordance with Article 17 for the revision of the specific actions listed in Annex II, if deemed appropriate. On the basis of the new specific actions, Member States may receive an additional amount as laid down in paragraph 1, subject to available resources.
3. The additional amounts under this Article shall be allocated to the Member States concerned in the individual financing decision approving or revising their national programme in accordance with the procedure laid down in Article 14 of Regulation (EU) No/2012 [Horizontal Regulation].

Article 8

Resources in the framework of the mid term review

1. In order to allocate the amount indicated in point c) of Article 6(1), by 1 June 2017 the Commission shall take into account the burden of Member States in border management as well as threat levels at the external borders of Member States for the period 2017-2020 as well as factors that affected security at the external borders of Member States in 2014-2016. The abovementioned amount shall be distributed between Member States based on the weighing of the following categories of borders:
 - a) 45% for external maritime borders
 - b) 35% for external land borders
 - c) 20% for airports
2. For the external maritime and land borders the calculation of the amount will be based on the length of the external border multiplied by a threat level (normal, medium, high) for each border section, as follows:
 - (i) coefficient 1 for normal threat
 - (ii) coefficient 3 for medium threat
 - (iii) coefficient 5 for high threat;

For the airports, the allocation will be calculated for each Member State as follows:

 - i) 50% on the basis of the number of persons crossing the external borders
 - ii) 50% on the basis of the number of third-country nationals refused entry at the external border.
3. In accordance with the Frontex risk analysis report and in consultation with Frontex, and where relevant other EU agencies, the Commission shall set-up threat levels for each external border section of the Member States for the period 2017-2020. The threat levels will be based on the following factors:

- (a) burden in border management at the external borders;
- (b) factors that affected security at the external borders of the Member States in the period 2014-2016;
- (c) changes in EU policies, e.g. visa policies;
- (d) possible future trends in migratory flows and risks of unlawful activities related to the irregular crossing of persons of the external borders, as well as;
- (e) likely political, economic and social developments in third countries, and in particular, neighbouring countries.

Before issuing its report determining the threat levels, the Commission will have an exchange of views with the Member States.

4. For the purpose of the distribution of resources under paragraph 1
- (a) the line between the areas referred to in Article 1 of Council Regulation (EC) No 866/2004 of 29 April 2004 on a regime under Article 2 of Protocol No 10 of the Act of Accession, but not the maritime border north of that line, shall be taken into account even though it does not constitute an external land border for as long as the provisions of Article 1 of Protocol 10 on Cyprus of the 2003 Act of Accession remain applicable;
 - (b) external maritime borders shall mean the outer limit of the territorial sea of the Member States as defined according to Articles 4 to 16 of the United Nations Convention on the Law of the Sea. However, in cases where long range operations on a regular basis are required in order to prevent illegal immigration/illegal entry, this shall be the outer limit of high threat areas. This shall be determined by taking into account the relevant data on these operations in 2014-2016 as provided by the Member States in question.

5. Moreover, following invitation from the Commission by 1 June 2017, Member States may receive an additional allocation, provided that it is earmarked as such in the programme and shall be used to achieve specific actions to be established in the light of the priorities of the Union at that time.

To that end, the Commission shall be empowered to adopt delegated acts in accordance with Article 17 for the revision of the specific actions listed in Annex II.

6. The additional amounts under this Article shall be allocated to the Member States concerned in individual financing decision approving or revising their national programme in accordance with the procedure laid down in Article 14 of Regulation (EU) No .../2012 [Horizontal Regulation].

Article 9

National programmes

1. The national programme to be prepared under this Instrument and the one to be prepared under Regulation No .../2012/EU establishing as part of the Internal Security Fund, the instrument for financial support for police co-operation, preventing and combating crime, and crisis management shall be proposed to the Commission as one single national programme for the Fund and in accordance with Article 14 of Regulation (EU) No .../2012 [Horizontal Regulation].
2. Under the national programmes, to be examined and approved by the Commission pursuant to Article 14 of Regulation (EU) No .../2012 [Horizontal Regulation], Member States shall, within the objectives defined in Article 3 and taking into account the outcome of the dialogue referred to in Article 13 of Regulation (EU) No .../2012 [Horizontal Regulation], pursue, in particular, objectives from the following non-exhaustive list:
 - (a) developing the European Border Surveillance System (EUROSUR) in accordance with Union legislation and guidelines;

- (b) supporting and expanding the existing capacity at national level in the management of the external borders and of measures within the area of free movement relating to the management of external borders in order to prevent and tackle illegal immigration, bearing in mind, in particular, new technology, developments and/or standards in relation to the management of migration flows;
- (c) supporting the further development of the management of migration flows by consular and other services of the Member State in third countries, including the setting up of consular cooperation mechanisms with a view to facilitating legitimate travel to and preventing illegal immigration into the Union;
- (d) reinforcing integrated border management by testing and introducing new tools, interoperable systems and working methods which aim to enhance information exchange within the Member State or to improve interagency co-operation;
- (e) ensuring the correct and uniform application of the Union acquis on border control and visa in response to weaknesses identified at European level, as evinced in results established in the framework of the Schengen evaluation mechanism;
- (f) increasing the capacity to face upcoming challenges including present and future threats and pressures at the external borders of the Union, taking into account in particular analysis carried out by relevant EU agencies.

3. In pursuit of the objectives defined in paragraph 2, Member States may support under their national programmes actions in and in relation to third countries including through information sharing and operational cooperation.

Article 10

Operating support under the national programmes of the Member States

1. A Member State may use up to 50% of the amount allocated under the Instrument to its national programme to finance operating support to the public authorities responsible for accomplishing the tasks and services which constitute a public service for the Union. These tasks and services relate to the one or more of the objectives referred to in Article 3(3) (a), (c) and (d).
2. Operating support shall be provided when the following conditions are met by the Member State concerned:
 - (a) compliance with the Union acquis on borders and visa;
 - (b) compliance with Union standards and guidelines for good governance on borders and visa, in particular the Schengen catalogue for external border control, the Practical Handbook for border guards and the Handbook for the processing of visa applications and the modification of issued visas.
3. To that end, before the approval of the national programme, the Commission shall assess the baseline situation in Member States which have indicated their intention to request operating support taking into account, where relevant, Schengen evaluation reports.

The findings of the Commission shall be the subject of an exchange of views with the Member State concerned.

Following the exchange of views, the acceptance by the Commission of budget support within the national programme of a Member State can be made conditional upon the programming and completion of a number of actions aiming to ensure that the conditions laid down in paragraph 2 are fully met by the time the budget support is provided.
4. Operating support shall be concentrated on specific tasks and/or services and shall be focused on the objectives as laid down in Annex III. It shall entail full reimbursement of the expenditure incurred to accomplish the tasks and/or services defined in the national programme, within the financial limits set by the programme and the ceiling laid down in paragraph 1.

5. Operating support shall be the subject of monitoring and exchange of information between the Commission and the Member State concerned in relation to the baseline situation in the Member State, the objectives and targets to be accomplished and the indicators to measure progress.
6. The Commission shall set out, by implementing acts, reporting procedures on the application of this provision and any other practical arrangements, to be made between Member States and the Commission to comply with this Article. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 18(2).

Article 11

Operating support for the Special Transit Scheme

1. The Instrument shall provide support to compensate for foregone fees from visas issued for the purpose of transit and additional costs incurred in implementing the Facilitated Transit Document (FTD) and the Facilitated Rail Transit Document (FRTD) scheme in accordance with Council Regulation (EC) No 693/2003 and Council Regulation (EC) No 694/2003.
2. The resources allocated to Lithuania pursuant to paragraph 1 shall not exceed EUR 150 million for the period 2014-2020 and shall be made available as additional specific operating support for Lithuania.
3. For the purpose of paragraph 1, additional costs means costs which result directly from the specific requirements of implementing the operation of the Special Transit Scheme and which are not generated as a result of the issuing of visas for the purpose of transit or other purposes.

The following types of additional cost shall be eligible for financing:

- (a) investment in infrastructures;
- (b) training of staff implementing the special transit scheme;
- (c) additional operational costs, including salaries of staff specifically implementing the special transit scheme.

4. The foregone fees referred to in paragraph 1 shall be calculated on the basis of the level of visa fees and the visa fee waivers established by the Visa Facilitation Agreement between the European Union and the Russian Federation, within the financial framework set out in paragraph 2.
5. The Commission and Lithuania shall review the application of this Article in case of changes which have an impact on the existence and/or functioning of the Special Transit Scheme.
6. The Commission shall set out, by implementing acts, reporting procedures on the application of this provision and any financial and other practical arrangements to be made between Lithuania and the Commission to comply with this Article. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 18(2).
7. To ensure the smooth functioning of the Special Transit Scheme the Commission may make specific interim payment arrangements which derogate from the provisions of Regulation (EU) No/2012 [Horizontal Regulation].

Article 12

Programming in line with the outcomes of the Schengen evaluation and monitoring mechanism

Following a Schengen evaluation report, as adopted in accordance with the Regulation on the establishment of an evaluation and monitoring mechanism to verify the application of the Schengen acquis, the Member State concerned shall examine together with the Commission how to address the findings and implement the recommendations within the framework of its national programme.

Where necessary, a Member State shall revise its national programme in accordance with article 14 (8) of Regulation (EC) No. .../.... [Horizontal Regulation] to take into account the findings and recommendations.

In dialogue with the Commission, and the Frontex Agency where appropriate, a Member State shall reallocate resources under its programme, including, where necessary, those programmed for operating support, and/or introduce or amend actions aiming to remedy the weaknesses in accordance with the findings and recommendations of the Schengen evaluation report.

Article 13

Union Actions

1. At the Commission's initiative, the Instrument may be used to finance transnational actions or actions of particular interest to the Union ('Union actions') concerning the general, specific and operational objectives referred to in Article 3.
2. To be eligible for funding, Union actions shall in particular pursue the following objectives:
 - (a) to support preparatory, monitoring, administrative and technical activities, and development of an evaluation mechanism, required to implement external borders and visa policies, including to implement Schengen governance as determined by the Schengen evaluation and monitoring mechanism as established by the Regulation (EU) No ... on the establishment of an evaluation and monitoring mechanism to verify the application of the Schengen acquis and the Schengen Borders Code;
 - (b) to improve the knowledge and understanding of the situation prevailing in the Member States through analysis, evaluation and close monitoring of policies;
 - (c) to support the development of statistical tools and methods and common indicators;
 - (d) to support and monitor the implementation of Union law and Union policy objectives in the Member States, and assess their effectiveness and impact;
 - (e) to promote networking, mutual learning, identification and dissemination of good practices and innovative approaches at European level;
 - (f) to enhance awareness of Union policies and objectives among stakeholders and the general public, including corporate communication on the political priorities of the Union;
 - (g) to boost the capacity of European networks to promote, support and further develop Union policies and objectives;
 - (h) to support particularly innovative projects developing new methods and/or technologies with a potential for transferability to other Member States, especially projects aiming at testing and validating research projects;
 - (i) to support actions in relation to and in third countries as referred to in Article 4(2).

3. Union actions shall be implemented in accordance with Article 7 of Regulation (EU) No/2012 [Horizontal Regulation].

Article 14

Emergency assistance

1. The Instrument shall provide financial assistance to address urgent and specific needs in the event of an emergency situation as defined in point (e) of Article 2.
2. Emergency assistance shall be implemented in accordance with the mechanism laid down in Article 7 and 8 of Regulation (EU) No .../2012 [Horizontal Regulation].

Article 15

Establishing a programme on the development of new IT systems

1. The indicative amount allocated for the programme on the development of the new IT systems managing the movement of third-country nationals across borders is set at EUR [1,100] million, cf. Regulation (EC) No. .../201X [“Smart Borders”]. The programme shall be implemented in accordance with the Union legislation defining the new IT systems and their communication infrastructure with the aim, in particular, to improving the management and control of travel flows at the external borders by reinforcing checks while speeding up border crossings for regular travellers.
2. The Commission shall be responsible for the management of the programme. It shall adopt a multiannual strategic framework which shall include
 - (a) the main actions to be carried out;
 - (b) a breakdown of the budget by budget years;
 - (c) the time table for the implementation;

- (d) the management methods to be used by main actions carried out. Actions may be implemented
- directly by the Commission or through executive agencies
 - indirectly by entities and persons other than Member States in accordance with Article 60 of Regulation (EU) N° 966/2012 [New Financial Regulation]

The main actions to be carried out should cover in particular, the development and testing of the central component and of the applications common to the national components of the systems, the communication infrastructure between central and national components, the coordination for putting them into operation, and the security management of the systems.

The Commission shall adopt, by implementing acts, the strategic framework and any revisions. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 18(2).

Article 16

Technical assistance

1. At the initiative and/or on behalf of the Commission, the Instrument may contribute up to EUR [1.7] million annually for technical assistance to the Internal Security Fund in accordance with Article 10 of Regulation (EU) No/2012 [Horizontal Regulation].
2. At the initiative of a Member State, the Instrument may finance technical assistance activities in accordance with Article 20 of Regulation (EC) No./2012 [Horizontal Regulation].

The amount set aside for technical assistance shall not exceed, for the period 2014 to 2020, 5 % of the total amount allocated to a Member State plus EUR [500.000]

CHAPTER III

FINAL PROVISIONS

Article 17

Exercise of the delegation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.
2. The delegation of power referred to in this Regulation shall be conferred on the Commission for a period of seven years from the entry into force of this Regulation. The Commission shall draw up a report in respect of the delegation of power no later than nine months before the end of the seven year period. The delegation of powers shall be tacitly extended for a period of three years, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period.
3. The delegation of powers referred to in this Regulation may be revoked at any time by the European Parliament or by the Council. A decision of revocation shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.
4. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.
5. A delegated act adopted pursuant to this Regulation shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or the Council.

Article 18

Committee procedure

1. The Commission shall be assisted by the common Committee 'Asylum and Migration, and Internal Security Funds' established by Article 55(1) of Regulation EU No .../2012 [Horizontal Regulation].
2. Where reference is made to this paragraph, Article 5 of Regulation (Eu) No 182/2011 shall apply and Article 55(3) of Regulation (EU) No .../2012 [Horizontal Regulation] shall also apply.

Article 19

Applicability of Regulation (EU) No .../2012 [Horizontal Regulation]

The provisions of Regulation (EU) No.../2012 [Horizontal Regulation] shall apply to this Instrument.

Article 20

Repeal

Decision No 574/2007/EC of the European Parliament and of the Council establishing the External Borders Fund shall be repealed with effect from [1 January 2014].

Article 21

Transitional provisions

1. This Regulation shall not affect the continuation or modification, including the total or partial cancellation, of the projects and annual programmes until their closure or the financial assistance approved by the Commission on the basis of Decision No 574/2007 EC or any other legislation applying to that assistance on 31 December 2013.
2. When adopting decisions on co-financing under this Instrument, the Commission shall take account of measures adopted on the basis of Decision No 574/2007//EC before [*date of publication in the Official Journal*] which have financial repercussions during the period covered by that co-financing.

3. Sums committed for co-financing approved by the Commission between 1 January 2011 and 31 December 2013 for which the documents required for closure of the actions have not been sent to the Commission by the deadline for submitting the final report shall be automatically decommitted by the Commission by 31 December 2017, giving rise to the repayment of amounts unduly paid.
4. Amounts relating to actions which have been suspended due to legal proceedings or administrative appeals having suspensory effect shall be disregarded in calculating the amount to be automatically decommitted.
5. Member States shall submit to the Commission by 30 June 2015 the evaluation report on the results and impact of actions co-financed under the Decision No 574/2007/EC concerning the period 2011 to 2013.
6. The Commission shall submit to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions by 31 December 2015 the ex-post evaluation report under Decision No 574/2007/EC concerning the period 2011 to 2013.

Article 22

Review

On the basis of a proposal of the Commission, the European Parliament and the Council shall review this Regulation by [30 June 2020] at the latest.

Article 23

Entry into force and application

This Regulation shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaties.

Done at Brussels,

For the European Parliament
The President

For the Council
The President

ANNEX I

Amounts constituting the basis for the national programmes of Member States

Member State/associated state	Minimum amount	% 2010-2012 EBF average	Fixed part distributed on basis of 2010-2012 average	Total amount
Austria	5.000.000	0,85%	11.289.495	16.289.495
Belgium	5.000.000	1,16%	15.425.192	20.425.192
Bulgaria	5.000.000	3,29%	43.574.993	48.574.993
Cyprus	5.000.000	1,81%	24.034.824	29.034.824
Czech Republic	5.000.000	0,87%	11.559.029	16.559.029
Denmark	5.000.000	0,49%	6.557.458	11.557.458
Estonia	5.000.000	1,56%	20.676.980	25.676.980
Finland	5.000.000	2,97%	39.346.880	44.346.880
France	5.000.000	7,44%	98.568.059	103.568.059
Germany	5.000.000	4,35%	57.605.418	62.605.418
Greece	5.000.000	15,05%	199.373.268	204.373.268
Hungary	5.000.000	3,33%	44.145.544	49.145.544
Iceland	5.000.000	0,03%	402.875	5.402.875
Italy	5.000.000	14,07%	186.426.874	191.426.874
Latvia	5.000.000	0,98%	12.963.906	17.963.906
Liechtenstein	5.000.000	0,00%	0	5.000.000
Lithuania	5.000.000	1,83%	24.278.589	29.278.589
Luxembourg	5.000.000	0,04%	493.003	5.493.003
Malta	5.000.000	3,54%	46.941.696	51.941.696
Netherlands	5.000.000	2,38%	31.553.796	36.553.796
Norway	5.000.000	0,87%	11.480.586	16.480.586
Poland	5.000.000	4,10%	54.352.271	59.352.271
Portugal	5.000.000	1,29%	17.126.370	22.126.370
Romania	5.000.000	5,22%	69.184.957	74.184.957
Slovakia	5.000.000	0,47%	6.274.556	11.274.556
Slovenia	5.000.000	2,39%	31.627.180	36.627.180
Spain	5.000.000	17,70%	234.553.098	239.553.098
Sweden	5.000.000	0,61%	8.031.768	13.031.768
Switzerland	5.000.000	1,29%	17.151.333	22.151.333
TOTAL	145.000.000	100,00%	1.325.000.000	1.470.000.000

Annex II

List of specific actions

1. Setting up consular cooperation mechanisms between at least two Member States resulting in economies of scale as regards the processing of applications and the issuing of visas at consulates in accordance with the principles on co-operation laid down in the Visa Code, including common visa application centres
2. Purchasing means of transport and operating equipment that are considered necessary for the deployment during joint operations by the Frontex Agency and which shall be put at the disposal of the Agency in accordance with the criteria established in Article 7(5) 2nd and 3rd paragraph of Regulation No 1168/2011²².

²² OJ L 304, 22.11.2011, p.1.

ANNEX III

Objectives for operating support within the national programmes

Objective 1: promoting the development and implementation of policies ensuring the absence of any controls on persons, whatever their nationality, when crossing the internal borders, carrying out checks on persons and monitoring efficiently the crossing of external borders

- operations
- staff cost
- service costs, such as maintenance and repair
- upgrading / replacement of equipment
- real estate (depreciation, refurbishment)

Objective 2: promoting the development and implementation of the common policy on visas and other short-stay residence permits, including consular co-operation

- operations
- staff cost
- service costs, maintenance and repair
- upgrading / replacement of equipment
- real estate (depreciation, refurbishment)

Objective 3: setting up and running IT systems, their communication infrastructure and equipment supporting the management of migration flows, including surveillance, across the external borders of the Union

- operational management of SIS, VIS and new systems set up in the period
- staff cost
- service costs, such as maintenance and repair
- communication infrastructure and security related matters
- upgrading / replacement of equipment
- rental of secure premises and/or refurbishment

ANNEX IV

List of common Indicators for the measurement of the Specific Objectives

- a) Supporting a common visa policy to facilitate legitimate travel, ensure equal treatment of third country nationals and tackle illegal immigration
 - i. Number of consular cooperation activities developed with the help of the Fund
(Subdivision: collocations, common application centres, representations, others)
 - ii. Number of staff trained and number of training courses in common visa policy related aspects with the help of the Fund
(Subdivision: number of staff, number of training courses)
 - iii. Number of specialised posts in third countries supported by the Fund
(Subdivision: ILOs, others)
 - iv. Percentage and number of consulates developed or upgraded with the help of the Fund out of the total number of consulates
- b) Supporting borders management to ensure, on one hand, a high level of protection of the external borders, including by the tackling of illegal immigration and, on the other hand, the smooth crossing of the external borders in conformity with the Schengen acquis
 - i. Number of staff trained and number of training courses in borders management related aspects with the help of the Fund
(Subdivision: number of staff, number of training courses)
 - ii. Number of border control (checks and surveillance) infrastructure and means developed or upgraded with the help of the Fund
(Subdivision: infrastructure, fleet (air, land, sea borders), equipment, others)
 - iii. Number of border crossings of the external borders through ABC gates supported from the Fund out of the total number of border crossings

iv. Number of national border surveillance infrastructure established/further developed in the framework of EUROSUR

(Subdivision: National Coordination Centres, Regional Coordination Centres, Local Coordination Centres, other types of coordination centres)
