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From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
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To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
No. Cion doc.:	C(2018) 8466 final
Subject:	COMMISSION DELEGATED REGULATION (EU) .../... of 14.12.2018 amending Annex II to Regulation (EU) No 516/2014 of the European Parliament and of the Council establishing the Asylum, Migration and Integration Fund

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Delegations will find attached document C(2018) 8466 final.

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Encl.: C(2018) 8466 final



Brussels, 14.12.2018  
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**COMMISSION DELEGATED REGULATION (EU) .../...**

**of 14.12.2018**

**amending Annex II to Regulation (EU) No 516/2014 of the European Parliament and of the Council establishing the Asylum, Migration and Integration Fund**

## EXPLANATORY MEMORANDUM

### 1. CONTEXT OF THE DELEGATED ACT

Regulation (EU) No 516/2014 of the European Parliament and of the Council<sup>1</sup> establishing the Asylum, Migration and Integration Fund empowers the Commission to adopt delegated acts pursuant to the conditions laid down in Article 26.

In particular, Article 16(2) of Regulation (EU) No 516/2014 empowers the Commission, in the context of the mid-term review referred to in Article 15 of Regulation (EU) No 514/2014, to revise via delegated act Annex II to the said Regulation setting out the list of specific actions referred to in Article 16 and referred to in recital 38.

The dynamic nature of the migratory flows requires a common flexible approach that answers adequately the policy developments and funding needs of the EU and its Member States, in particular those consistently facing high migratory pressure at its external borders.

In this context, the European Agenda on Migration, put forward by the European Commission on 13 May 2015<sup>2</sup> and endorsed by the European Council of 25 and 26 June 2015<sup>3</sup>, comprised a set of short and long-term measures, including effective implementation of the Common European Asylum System (CEAS). Amongst others, reference is made to improved reception conditions, in view of reinforcing protection of the fundamental rights of asylum-seekers, paying particular attention to the needs of vulnerable groups. In accordance with Article 3(2) of Regulation (EU) No 516/2014, the Asylum, Migration and Integration Fund should contribute to strengthen and develop all aspects of the CEAS.

The need to support such efforts has been reiterated by the European Council in its conclusions of 28 June 2018 calling for the establishment, on a voluntary basis, of "controlled centres" in the EU territory.

In the context of the mid-term review exercise of the national programmes of Member States performed in accordance with Article 15 of Regulation (EU) No 514/2014, and taking into account the EU policy priorities identified above and the general and specific objectives of the Asylum, Migration and Integration Fund, additional funding needs of the Member States were identified, in particular from those Member States confronted with high migratory pressure at the external borders.

Those needs are most particularly related to reception and accommodation and detention facilities, and respective services for applicants for international protection or for other third-country nationals who are present in a Member State and do not or no longer fulfil the conditions for entry and/or stay in a Member State, as well as to housing support for beneficiaries of international protection.

Such funding needs should be catered for as adequately as possible using the most appropriate funding tool.

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<sup>1</sup> Regulation (EU) No 516/2014 of the European Parliament and of the Council of 16 April 2014 establishing the Asylum, Migration and Integration Fund, amending Council Decision 2008/381/EC and repealing Decisions No 573/2007/EC and No 575/2007/EC of the European Parliament and of the Council and Council Decision 2007/435/EC (OJ L 150, 20.05.2014, p. 168).

<sup>2</sup> COM(2015) 240 final.

<sup>3</sup> EUCO 22/15 CO EUR 8 CONCL 3.

In this respect, taking into account the specificities of the related funding needs, topping up the Member States' national programmes via the distribution key that was used for the distribution of each Member State's basic allocation is not the appropriate tool, as it would not allow targeting particularly the identified needs of those Member States facing high migratory pressure.

The use of Emergency Assistance is not the most adequate option either, since it requires in principle very specific circumstances, namely an emergency situation as defined in point (k) of Article 2 of Regulation (EU) No 516/2014. In addition, under Emergency Assistance, funding is provided according to a project approach and for a limited duration contrary to the multi-annual perspective of the funding provided through the national programme.

The use of specific actions under shared management allows for a more flexible adjustment to the dynamics and specificities of a particular situation as they offer a tailor-made approach to channel additional funding to Member States to support a specific activity under the Asylum Migration and Integration Fund. Due to the very specific nature of the activities in need of further financial support mentioned above, specific actions are therefore considered the most adequate funding tool.

The Annex II with the current list of specific actions contains six transnational specific actions and two national that are in cooperation with UNHCR.

As the existing specific actions do not allow supporting the type of activities identified in the context of the mid-term review, there is a need to include such a new specific action in the relevant annex of the Regulation (EU) No 516/2014.

The newly proposed specific action would contribute to the effective management of migration flows, part of the general objective of the Fund, and would enhance solidarity between the Member States, which is an explicit specific objective of the Asylum, Migration and Integration Fund. Moreover, it is in line with the measures of the European Agenda on Migration on effective implementation of the Common European Asylum System.

In addition, such an amendment to the list of specific actions to answer those particular needs of the Member States, as envisioned in the legal base of Asylum Migration and Integration Fund, provides also an opportunity to enhance the EU added value in the context of the management of migratory flows.

## **2. CONSULTATIONS PRIOR TO THE ADOPTION OF THE ACT**

Pursuant to the Better Regulation rules and in accordance with recital 51 to Regulation (EU) No 516/2014, when preparing delegated acts the Commission should consult experts from all Member States. An expert level meeting was convened on 6 June 2018 to discuss the matter. Due to the very low number of registered participants, the meeting was cancelled and the consultation took place through a written procedure, from 4 of June to 20 of June 2018.

The comments received from Member States' experts were duly taken into consideration in the draft Commission Delegated Regulation.

In accordance with the Better Regulation rules, a feedback mechanism took place after the inter-service consultation. The feedback period ended on 22 October 2018. No comments were received.

### **3. LEGAL ELEMENTS OF THE DELEGATED ACT**

Article 16(2) of Regulation (EU) No 516/2014 empowers the Commission to adopt delegated acts to amend Annex II to that Regulation setting out the list of specific actions.

Article 26 of Regulation (EU) No 516/2014 lays down the exercise of delegation and in particular the conditions under which the Commission is conferred the power to adopt delegated acts.

**COMMISSION DELEGATED REGULATION (EU) .../...**

**of 14.12.2018**

**amending Annex II to Regulation (EU) No 516/2014 of the European Parliament and of the Council establishing the Asylum, Migration and Integration Fund**

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 516/2014 of the European Parliament and of the Council of 16 April 2014 establishing the Asylum, Migration and Integration Fund, amending Council Decision 2008/381/EC and repealing Decisions No 573/2007/EC and No 575/2007/EC of the European Parliament and of the Council and Council Decision 2007/435/EC<sup>4</sup>, and in particular Article 16(2) thereof,

Whereas:

- (1) Article 15(1)(b) and Article 16(1) and (3) of Regulation (EU) No 516/2014 refer to the available resources for specific actions to be allocated to the Member States.
- (2) In the context of the mid-term review referred to in Article 15 of Regulation (EU) No 514/2014, additional funding needs of the Member States were identified in the area of asylum, migration and integration.
- (3) The mid-term review clearly identified the need for the provision of adequate financial support in relation to reception and accommodation and detention facilities, and respective services, for applicants for international protection or for third-country nationals who are present in a Member State and do not or no longer fulfil the conditions for entry or stay in a Member State, as well as for housing support for beneficiaries of international protection.
- (4) The support of the Union to such efforts has been reiterated in the European Council conclusions of 28 June 2018 calling for the establishment, on a voluntary basis, of ‘controlled centres’ in the territory of the Union.
- (5) The existing list of specific actions set out in Annex II to Regulation (EU) No 516/2014 offers eight specific actions for Member States to receive additional funding out of which six are joint actions involving several Member States.

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<sup>4</sup> OJ L 150, 20.5.2014, p. 168.

- (6) The policy developments and the funding needs detected in the context of the mid-term review cannot be adequately tackled through the current list of specific actions. Therefore, amending that list is the best way to ensure flexibility of the Asylum, Migration and Integration Fund.
- (7) The new specific action being added to Annex II to Regulation (EU) No 516/2014 would contribute to the efficient management of the migration flows. It would be in line with the specific objective of that Regulation, as referred to in Article 3(2)(d), to enhance solidarity between the Member States.
- (8) The addition of a new specific action that reflects the recent policy developments and funding needs of the Member States would generate significant added value as it would contribute to the mitigation of the pressure on those most affected by migration and asylum flows and, thus, on the Union as a whole.
- (9) In order to allow for the prompt application of this specific action, in view of the urgent funding needs identified above, the Regulation should enter into force on the day following that of its publication in the *Official Journal of the European Union*.
- (10) Regulation (EU) No 516/2014 should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

#### *Article 1*

In Annex II to Regulation (EU) No 516/2014, the following point 9 is added:

‘9. In Member States facing high and disproportionate migratory pressure, the establishment, development and operation of adequate reception and accommodation and detention facilities, and respective services, for applicants for international protection or third-country nationals who are present in a Member State and do not or no longer fulfil the conditions for entry and/or stay, as well as housing support for beneficiaries of international protection, including in "controlled centres" established by a Member State.’

#### *Article 2*

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, 14.12.2018

*For the Commission*  
*The President*  
*Jean-Claude JUNCKER*