



Council of the  
European Union

048495/EU XXVI. GP  
Eingelangt am 19/12/18

Brussels, 19 December 2018  
(OR. en)

15692/18

JAI 1316  
FRONT 461  
ENFOPOL 626  
CT 203

#### COVER NOTE

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From: Secretary-General of the European Commission,  
signed by Mr Jordi AYET PUIGARNAU, Director

date of receipt: 14 December 2018

To: Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of  
the European Union

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No. Cion doc.: C(2018) 8465 final

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Subject: COMMISSION DELEGATED REGULATION (EU) .../... of 14.12.2018  
amending Annex II to Regulation (EU) No 515/2014 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

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Delegations will find attached document C(2018) 8465 final.

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Encl.: C(2018) 8465 final



Brussels, 14.12.2018  
C(2018) 8465 final

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

**of 14.12.2018**

**amending Annex II to Regulation (EU) No 515/2014 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**

## EXPLANATORY MEMORANDUM

### 1. CONTEXT OF THE DELEGATED ACT

Regulation (EU) No 515/2014 of the European Parliament and of the Council<sup>1</sup> establishing, as part of the Internal Security Fund, the instrument for financial support for external borders and visa, empowers the Commission to adopt delegated acts pursuant to the conditions laid down in Article 17 of the Regulation.

In particular, Article 7(2) of Regulation (EU) No 515/2014 empowers the Commission to adopt delegated acts for the revision of the specific actions listed in Annex II to that Regulation, if deemed appropriate, including in the context of the mid-term review.

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, especially those consistently facing high migratory pressure at its external borders.

In this context, the Internal Security Fund, and in particular the instrument for external borders and visa, should be able to provide adequate financial support to the implementation of EU policies such as the hotspot approach, as outlined in 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>. Through the hotspot approach, the EU provides operational support to Member States affected by disproportionate migratory pressure at the EU's external borders. It offers an integrated, comprehensive and targeted assistance in a spirit of shared solidarity and responsibility as well as with a view to safeguarding the integrity of the Schengen area.

In the context of the mid-term review of the national programmes performed in the framework of Article 15 of Regulation (EU) No 514/2014, and taking into account the EU policy priorities highlighted above, additional funding needs were identified as regards border control activities, in particular in those Member States confronted with high migratory pressure at the external borders.

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, as well as increased cooperation with third countries to strengthen their border management capacities.

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

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

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<sup>1</sup> Regulation (EU) No 515/2014 of the European Parliament and of the Council of 16 April 2014 establishing, as part of the Internal Security Fund, the instrument for financial support for external borders and visa and repealing Decision No 574/2007/EC (OJ L 150, 20.05.2014, p. 143).

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

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

allow to target particularly the identified needs of those Member States facing high migratory pressure and ensuring the border control of the EU external borders.

The use of Emergency Assistance is not an adequate option either, since it requires in principle very specific circumstances, namely an emergency situation as defined in point (f) of Article 2 of Regulation (EU) 515/2014. In addition, under Emergency Assistance funding is provided according to a project approach and for a short duration (as a rule maximum of 12 months), 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 Internal Security Fund, in its borders and visa component. Due to the very specific nature of the activities in need of further financial support such as the implementation of the hotspot approach, specific actions are therefore considered the most adequate funding tool.

There are currently two specific actions listed in Annex II of Regulation (EU) No 515/2014. One is a joint action between at least two Member States and concerns consular cooperation, while the second one relates to the purchase of means of transport and operating equipment to be put at the disposal of the EBCG Agency in case of joint operations.

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 a new specific action in the relevant annex of the Regulation (EU) 515/2014. This specific action would contribute to the implementation of the hotspot approach and, thus, support integrated border management, ensuring the effective control and protection of the external borders of the Union.

In addition, such amendment to the list of specific actions to respond to those particular needs of the Member States, as envisioned in the legal base of the instrument for financial support for external borders and visa, part of the Internal Security 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 pursuant to recital 40 to Regulation (EU) 515/2014, when preparing delegated acts the Commission should carry out appropriate consultations, including at expert level. Such consultation took place, through written procedure, between 4 of June and 20 of June 2018, since the expert level meeting convened for the 6 June 2018 to discuss the matter had a very low number of registered attendees and was therefore cancelled.

Comments received from the experts from the Member States were duly taken into consideration in the drafting of this 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 7(2) of Regulation (EU) No 515/2014 empowers the Commission to adopt delegated acts to amend Annex II to that Regulation setting out the list of specific actions.

Article 17 of Regulation (EU) No 515/2014 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 515/2014 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 COMMISSION,

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

Having regard to Regulation (EU) No 515/2014 of the European Parliament and of the Council of 16 April 2014 establishing, as part of the Internal Security Fund, the instrument for financial support for external borders and visa and repealing Decision No 574/2007/EC<sup>4</sup>, and in particular Article 7(2) thereof,

Whereas:

- (1) Article 7 of Regulation (EU) No 515/2014 refers to 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 of the European Parliament and of the Council<sup>5</sup> additional funding needs of the Member States were identified in the area of border management.
- (3) The mid-term review identified the need to provide adequate financial support to border control activities, in particular in the hotspots areas as defined in Article 2(10) of Regulation (EU) No 2016/1624<sup>6</sup>, or other areas facing similar existing or potential high and disproportionate migratory pressure.
- (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, as well as increased cooperation with third countries to strengthen their border management capacities.

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<sup>4</sup> OJ L 150, 20.5.2014, p. 143.

<sup>5</sup> Regulation (EU) No 514/2014 of the European Parliament and of the Council of 16 April 2014 laying down general provisions on the Asylum, Migration and Integration Fund and on the instrument for financial support for police cooperation, preventing and combating crime, and crisis management (OJ L 150, 20.5.2014, p. 112).

<sup>6</sup> Regulation (EU) 2016/1624 of the European Parliament and of the Council of 14 September 2016 on the European Border and Coast Guard and amending Regulation (EU) 2016/399 of the European Parliament and of the Council and repealing Regulation (EC) No 863/2007 of the European Parliament and of the Council, Council Regulation (EC) No 2007/2004 and Council Decision 2005/267/EC (OJ L 251, 16.9.2016, p. 1).

- (5) The existing list of specific actions set out in Annex II to Regulation (EU) No 515/2014 offers two specific actions for Member States to receive additional funding.
- (6) The funding of actions implementing the hotspot approach or similar approach cannot be adequately channelled through the current list of specific actions. Therefore, amending that list is the best way to ensure flexibility of the Internal Security Fund – Borders and Visa.
- (7) The new specific action being added to Annex II to Regulation (EU) No 515/2014 would contribute to the effective level of control of the external borders of the Union. It would be in line with the specific objective of that Regulation, as referred to in Article 3(2)(b), to support integrated border management, facilitating access to international protection for those needing it.
- (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 515/2014 should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

#### *Article 1*

In Annex II to Regulation (EU) No 515/2014, the following point 3 is added:

‘3. Establishment, development and operation including the provision of services such as identification, fingerprinting, security and medical screening, debriefing, provision of information, registration and first reception, of hotspot areas, as defined in Article 2(10) of Regulation (EU) No 2016/1624, or other areas applying the hotspot procedures or similar arrangements such as "controlled centres" established by a Member State, as well as provision of the abovementioned services at border crossing points facing similar existing or potential high and disproportionate migratory pressure, including if necessary support to border management activities in third countries.’

#### *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*