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COVER NOTE

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
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Subject:	COMMISSION DELEGATED REGULATION (EU) .../... of 15.10.2019 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

Delegations will find attached document C(2019) 7314 final.

Encl.: C(2019) 7314 final



Brussels, 15.10.2019
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COMMISSION DELEGATED REGULATION (EU) .../...

of 15.10.2019

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 Council¹ 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 to the policy developments and funding needs of the EU and its Member States, especially those consistently facing high and disproportionate 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 border control measures, including 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 2015² and endorsed by the European Council of 25 and 26 June 2015³.

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

¹ 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).

² COM(2015) 240 final.

³ EUCO 22/15 CO EUR 8 CONCL 3.

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.

In light of the above, the provision of such extra funding through Specific Actions (SA) under the National Programmes (shared management) is the most adequate channel, as it allows for a more flexible adjustment to the dynamics and specificities of a particular situation, offering a tailor-made approach to support a specific activity in the concerned Member States under the Internal Security Fund, in its borders and visa component.

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 reinforcement of border control activities (including border checks, first reception and border surveillance) as well as 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 7 June and 24 June 2019.

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 26 August 2019. 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 15.10.2019

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/EC⁴, and in particular Article 7(2) thereof,

Whereas:

- (1) 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 Council⁵, additional funding needs of the Member States were identified in the area of border management.
- (2) 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 2016/1624⁶, as well as in other border areas facing similar existing or potential high and disproportionate migratory pressure.
- (3) Annex II to Regulation (EU) No 515/2014 lists two specific actions for Member States to receive additional funding.
- (4) The funding of actions aiming at reinforcing border control capacities and implementing the hotspot approach, or similar, cannot be adequately channelled through the current list of specific actions. Therefore, amending that list is the best way to meet the needs identified within the objectives of Internal Security Fund – Borders and Visa.

⁴ OJ L 150, 20.5.2014, p. 143.

⁵ 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).

⁶ 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 new specific action being added to Annex II to Regulation (EU) No 515/2014 will contribute to an effective level of control of the external borders of the Union. It is in line with the specific objective of that Regulation, as referred to in its Article 3(2)(b), which is to support integrated border management, facilitating access to international protection for those needing it.
- (6) The addition of a new specific action that reflects the recent policy developments and funding needs of the Member States will generate significant added value as it will contribute to the mitigation of the pressure on those most affected by migration and asylum flows and, thus, on the Union as a whole.
- (7) In order to allow for the prompt application of this specific action, in view of the urgent funding needs identified, the Regulation should enter into force on the day following that of its publication in the *Official Journal of the European Union*.
- (8) 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. Border control activities such as border checks and border surveillance measures in areas facing currently or potentially high or disproportionate migratory pressure, or both, including activities related to the establishment, development and operation of hotspot areas, as defined in Article 2(10) of Regulation (EU) No 2016/1624⁷, as well as, where 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, 15.10.2019

For the Commission
The President
Jean-Claude JUNCKER

⁷ 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).