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DRAFT STATEMENT OF THE COUNCIL'S REASONS

Subject: Council position at first reading with a view to the adoption of a Regulation of the European Parliament and of the Council establishing, as part of the Integrated Border Management Fund, the Instrument for Financial Support for Border Management and Visa Policy
– Draft Statement of the Council's reasons

I. INTRODUCTION

1. On 13 June 2018, the Commission put forward a proposal for a Regulation of the European Parliament and of the Council establishing, as part of the Integrated Border Management Fund, the instrument for financial support for border management and visa¹ (hereafter ‘BMVI’ or ‘the Instrument’) under Heading 4 (Migration and Border Management) of the Multiannual Financial Framework (MFF) 2021-2027.
2. The European Parliament adopted its first-reading position² at its plenary session on 13 March 2019.
3. The European Economic and Social Committee adopted its opinion on 17 October 2018³.
4. The Committee of the Regions did not deliver an opinion on this Instrument.
5. On 7 June 2019, the Council adopted a partial general approach⁴ which served as an initial mandate for negotiations with the European Parliament. On 12 October 2020, the Council adopted a full general approach⁵ on the abovementioned proposal.
6. The co-legislators engaged in negotiations in the second half of 2019. At the trilogue on 10 December 2020, the co-legislators secured a provisional agreement, which was presented at the meeting of the Permanent Representatives Committee on 16 December 2020⁶. Work continued in 2021 in order to finalise work on recitals, terminology, retroactivity provisions to ensure continuity of funding and indicators.
7. The Permanent Representatives Committee analysed the final compromise text⁷ with a view to agreement at its meeting on 24 February 2021.

1 10151/18 + ADD 1, ADD 1 COR 1

2 7403/19

3 13606/18

4 10141/19

5 11943/20

6 13863/20

7 6105/21

8. On 1 March 2021, the European Parliament's Civil Liberties, Justice and Home Affairs (LIBE) Committee confirmed the political agreement. The Chair of the LIBE Committee sent a letter to the Chair of the Permanent Representatives Committee, confirming that, should the Council approve this text at first reading, after legal-linguistic revision, the Parliament would approve the Council's position at its second reading.
9. The Permanent Representatives Committee confirmed the political agreement⁸ at its meeting on 10 March 2021.

II. OBJECTIVE

10. The policy objective of the Instrument is to ensure strong and effective European integrated border management at the external borders while safeguarding the free movement of persons and fundamental rights, thereby contributing to guaranteeing a high level of security in the Union.
11. The Instrument will contribute to the following specific objectives: (i) supporting effective European integrated border management at the external borders to facilitate legitimate border crossings, to prevent and detect illegal immigration and cross-border crime and to effectively manage migratory flows; (ii) supporting the common visa policy to ensure a harmonised approach with regard to the issuance of visas and to facilitate legitimate travel, while helping to prevent migratory and security risks.

III. ANALYSIS OF THE COUNCIL'S POSITION AT FIRST READING

12. The European Parliament and the Council conducted negotiations with a view to concluding an agreement at the stage of the Council's position at first reading ('early second-reading agreement').

⁸ 6690/21

13. The text of the Council's position at first reading reflects the compromise reached in the negotiations between the European Parliament and the Council, facilitated by the Commission. The main elements of this compromise are summarised below.
14. Multipurpose equipment. The co-legislators agreed that assets purchased with a financial contribution from the Instrument will remain available to be used in other areas, including for customs, for maritime operations or for achieving the objectives of the two other Home Affairs funds (the AMIF and the ISF), subject to the condition of not exceeding 30% of the total period for the use of the asset.
15. Minimum level of expenditure for visa policy. The co-legislators agreed to set a binding percentage of at least 10% of Member States' programmes to cover expenditure under this specific objective. This binding percentage will not apply to the thematic facility. Member States will be allowed to depart from the minimum percentage only where a detailed explanation is included in their programmes.
16. Actions in and in relation to third countries. The co-legislators agreed that the Instrument will have the degree of flexibility needed for actions that support its objectives, whether these are carried out inside or outside the Union's borders. Those actions will have to be carried out in synergy and coherence with other actions outside the Union supported through other Unions instruments.
17. Role of Union agencies. The knowledge and expertise of the relevant Union agencies, in particular the European Border and Coast Guard Agency, the European Agency for the Operational Management of Large-Scale IT systems in the Area of Freedom, Security and Justice (eu-LISA) and the EU Agency for Fundamental Rights, will be taken into account as regards the areas of their competence in the development of the Member States' programmes. They could also be consulted by the Commission on actions included under operating support for which the agencies have particular expertise and in relation to monitoring and evaluation tasks.

18. Provisions on fundamental rights. The provisions on fundamental rights were streamlined across the legal text. In this context, a new article on ‘non-discrimination and respect for fundamental rights’ was introduced in the Regulation.
19. Budget top-up. The co-legislators agreed on an additional allocation of a maximum amount of EUR 1 billion in 2018 prices to be allocated to the thematic facility in accordance with Article 5 and Annex II of the MFF Regulation.
20. Delegated and implementing acts. The co-legislators agreed that Commission's work programmes will be adopted by implementing acts (examination procedure) and that Annex III (scope of support) will be amended by means of a delegated act.
21. Actions eligible for higher co-financing rates. Some actions were considered as a priority and their co-financing rates were increased. They include immediate support to victims of trafficking in human beings, the development of integrated child protection systems at the external borders, measures targeting the identification of vulnerable persons, immediate assistance to such persons and their referral to protection services, ETIAS operating costs, measures to enhance the quality of data stored in ICT systems in the field of visa and borders and measures to improve the interoperability of ICT systems.
22. Operating support. The maximum percentage for operating support was increased to 33% of the amount allocated to the programme. Costs related to training activities and real estate will be covered for both objectives, borders and visa, broadening the initial scope proposed by the Commission.
23. Blending operations. The co-legislators decided not to include the possibility of using this type of financial support by the Instrument.

24. Transfer of resources (horizontal). A receiving clause was introduced to cater for the possible transfer to the Instrument, at the request of Member States, of up to 5% of the initial allocation from any of the funds of the Common Provisions Regulation under shared management.
25. Pre-financing (horizontal). Specific pre-financing rates, departing from the Common Provisions Regulation, were agreed for the Instrument.
26. Control and audit of projects carried out by international organisations (horizontal). As a derogation to the Common Provisions Regulation, a new article was agreed to facilitate Member States' work with international organisations under shared management without altering their obligation to ensure the legality and regularity of expenditure declared to the Commission.

IV. CONCLUSION

27. The Council's position at first reading reflects the compromise agreed between the Council and the European Parliament, with the support of the Commission.
28. The Council believes that its position at first reading represents a balanced compromise and that, once adopted, the new Regulation will play a key role in ensuring strong and effective European integrated border management at the external borders while safeguarding the free movement of persons and fundamental rights, thereby contributing to guaranteeing a high level of security in the Union.