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PROPOSAL

From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
date of receipt:	13 July 2023
To:	Ms Thérèse BLANCHET, Secretary-General of the Council of the European Union
No. Cion doc.:	COM(2023) 394 final ANNEX
Subject:	ANNEX to the Proposal for a COUNCIL DECISION on the conclusion, on behalf of the European Union, of the Agreement **between the European Union and Iceland on supplementary rules in relation to the instrument for financial support for border management and visa policy, as part of the Integrated Border Management Fund**

Delegations will find attached document COM(2023) 394 final ANNEX.

Encl.: COM(2023) 394 final ANNEX

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Brussels, 10.7.2023
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ANNEX

ANNEX

to the

Proposal for a COUNCIL DECISION

on the conclusion, on behalf of the European Union, of the Agreement between the European Union and Iceland on supplementary rules in relation to the instrument for financial support for border management and visa policy, as part of the Integrated Border Management Fund

ANNEX

THE EUROPEAN UNION, hereinafter referred to as 'the Union'

and

ICELAND,

Hereinafter referred to jointly as 'the Parties'

HAVING REGARD to the Agreement between the European Union, the European Community and the Republic of Iceland and the Kingdom of Norway on the latters' association with the implementation, application and development of the Schengen *acquis*[1] ('Association Agreement with Iceland and Norway'),

WHEREAS:

(1) The Union established the instrument for financial support for border management and visa policy ('the BMVI'), by means of Regulation (EU) 2021/1148 of the European Parliament and of the Council[2] ('the BMVI Regulation'), as part of the Integrated Border Management Fund.

(2) The BMVI Regulation constitutes a development of the Schengen *acquis* within the meaning of the Association Agreement with Iceland and Norway.

(3) The instrument for financial support for border management and visa policy, as part of the Integrated Border Management Fund, constitutes a specific instrument in the context of the Schengen *acquis* designed to ensure strong and effective European integrated border management at the external borders, while safeguarding the free movement of persons, in full compliance with the Member States' and associated countries' commitments on fundamental rights, and to support a uniform implementation and modernisation of the common visa policy, thereby contributing to guaranteeing a high level of security in Member States and associated countries.

(4) Article 9(2) of the BMVI Regulation provides that the amount referred to in point (a) of Article 7(3) and the additional resources provided under that Regulation shall be implemented under shared management in accordance with Article 63 of Regulation

[1] OJ L 176, 10.7.1999, p. 36.

[2] Regulation (EU) 2021/1148 of the European Parliament and of the Council of 7 July 2021 establishing, as part of the Integrated Border Management Fund, the Instrument for Financial Support for Border Management and Visa Policy (OJ L 251, 15.7.2021, p. 48).

(EU, Euratom) 2018/1046[3] ('the Financial Regulation') and Regulation (EU) 2021/1060[4] ('the CPR').

(5) Article 7(6) of the BMVI Regulation provides that arrangements shall be made to specify the nature and modalities of the participation in the BMVI by countries associated with the implementation, application and development of the Schengen *acquis*.

(6) The BMVI offers the opportunity for implementation of actions in shared management, direct and indirect management modes, and this Agreement should make it possible that the implementation in any of these methods can be realised in Iceland in accordance with the principles and rules of the EU on financial management and control.

(7) In light of the sui generis nature of the Schengen *acquis* and the importance of its uniform application for the integrity of the Schengen area, all rules applicable for the management of national programmes should apply in Iceland in the same way as for Member States.

(8) To facilitate the calculation and use of the annual contributions due by Iceland to the BMVI, its contributions for the period 2021-2027 should be paid in five annual instalments from 2023 to 2027. From 2023 to 2025 the annual contributions are set in fixed amounts while the contribution due for the years 2026 and 2027 should be determined in 2026 on the basis of the nominal gross domestic product of all States participating in the BMVI taking into account the payments effectively made.

(9) In line with the principle of equal treatment, Iceland should benefit from any surplus revenue as defined in Article 86 of Regulation (EU) 2018/1240 of the European Parliament and of the Council ('ETIAS Regulation')[5]. Within the framework of the BMVI, the financial contributions due by Iceland to the BMVI are proportionally reduced.

(10) The Union data protection legislation, including Regulation (EU) 2016/679, is covered by the EEA Agreement and has been incorporated into Annex XI thereto. Iceland therefore applies that Regulation.

(11) Iceland is not bound by the Charter of Fundamental Rights of the European Union, though is a party to and thus observes the rights and principles recognised by the

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[3] Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012 (OJ L 193, 30.7.2018, p. 1).

[4] Regulation (EU) 2021/1060 of the European Parliament and of the Council of 24 June 2021 laying down common provisions on the European Regional Development Fund, the European Social Fund Plus, the Cohesion Fund, the Just Transition Fund and the European Maritime, Fisheries and Aquaculture Fund and financial rules for those and for the Asylum, Migration and Integration Fund, the Internal Security Fund and the Instrument for Financial Support for Border Management and Visa Policy (OJ L 231, 30.6.2021, p. 159).

[5] Regulation (EU) 2018/1240 of the European Parliament and of the Council of 12 September 2018 establishing a European Travel Information and Authorisation System (ETIAS) and amending Regulations (EU) No 1077/2011, (EU) No 515/2014, (EU) 2016/399, (EU) 2016/1624 and (EU) 2017/2226 (OJ L 236, 19.9.2018, p. 1).

European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols and in the Universal Declaration of Human Rights. References contained in the BMVI and CPR Regulations and this Agreement to the EU Charter on Fundamental Rights should accordingly be understood as references to the European Convention on Human Rights and to the Protocols ratified by Iceland and Article 14 of the Universal Declaration of Human Rights.

(12) Iceland, not being bound by the references to the Union environmental acquis, should implement the BMVI and this Agreement in line with the Paris Agreement and UN Sustainable Development Goals.

HAVE AGREED AS FOLLOWS:

Article 1

Scope

This Agreement sets out the supplementary rules necessary for the participation of Iceland in the Instrument for Financial Support for Border Management and Visa Policy (the 'BMVI') as part of the Integrated Border Management Fund for the programming period 2021 to 2027 in accordance with Article 7(6) of Regulation (EU) 2021/1148 ('the BMVI Regulation').

Article 2

Financial management and control

1. In implementing the BMVI Regulation, Iceland shall take the necessary measures to ensure compliance with the provisions relevant for the financial management and control, which are laid down in the Treaty on the Functioning of the European Union ('TFEU') and in Union law that derives its legal basis from the TFEU.

   The provisions referred to in the first subparagraph are the following:

   (a) Articles 33, 36, 61, 63, 97-105, 106, 115-116, 125-129, 135 -144, 154 and 155 (1), (2), (4), (6) and (7), 180, 254-257 of Regulation (EU, Euratom) 2018/1046 ('the Financial Regulation');

   (b) Council Regulation (Euratom, EC) No 2185/96[6];

   (c) Regulation (EC, Euratom) No 2988/95[7] and Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council[8];

[6] Council Regulation (Euratom, EC) No 2185/96 concerning on-the-spot checks and inspections carried out by the Commission in order to protect the European Communities' financial interests against fraud and other irregularities (OJ L 292, 15.11.1996, p. 2).

[7] Council Regulation (EC, Euratom) No 2988/95 of 18 December 1995 on the protection of the European Communities financial interests (OJ L 312, 23.12.1995, p. 1).

[8] Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) and

(d) Articles 1 - 4, 7 - 9, 15 - 17, 21 - 24, 35 - 42, 44 - 107, 113 - 115 and 119 and the relevant BMVI Annexes of Regulation (EU) 2021/1060 ('the CPR').

2. In case of any amendment, repeal, replacement or recast of the Financial Regulation relevant to the BMVI:

(a) The European Commission shall inform Iceland thereof at the earliest occasion, and, at the request of Iceland, provide explanations on the amendment, repeal, replacement or recast.

(b) Notwithstanding Article 13(4), the European Commission (on behalf of the Union) and Iceland may determine by common agreement any amendment of paragraph 1 subparagraph 2 (a) of this Article necessary to take into account such amendment, repeal, replacement or recast of the Financial Regulation.

3. Iceland shall apply and, where necessary, implement

(a) any legal act of the European Parliament and the Council modifying the CPR, insofar as it concerns provisions relating to the application of the BMVI Regulation;

(b) any implementing or delegated act adopted by the European Commission on the basis of the CPR, insofar as it concerns provisions relating to the application of the BMVI Regulation.

To allow Iceland to do so, the European Commission shall

(a) inform Iceland of all proposals for any act referred to under subparagraph 1, points (a) and (b) at the earliest occasion, and, at the request of Iceland, provide explanations on the proposals;

(b) notify Iceland of all acts referred to under subparagraph 1, points (a) or (b) as soon as possible.

Iceland may inform the EU of its position concerning the proposals as soon as possible which shall be given due consideration by the Union.

Iceland shall, as soon as possible and in any event not later than 90 days after notification, notify the EU of its decision to accept the acts notified by the EU to Iceland under subparagraph 1, points (a) or (b).

4. Legal entities established in Iceland may participate in activities financed from the instrument under conditions equivalent to those applicable to legal entities established in the Union.

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repealing Regulation (EC) No 1073/1999 of the European Parliament and of the Council and Council Regulation (Euratom) No 1074/1999 (OJ L 248, 18.9.2013, p. 1).

Article 3

Specific application of provisions of the CPR Regulation mentioned in Article 2(1)(d)

In ensuring compliance by Iceland with the provisions referred to in Article 2(1)(d):

(a) references to the EU Charter on Fundamental Rights shall be understood as references to the European Convention on Human Rights and the Protocols as ratified by Iceland and Article 14 of the Universal Declaration of Human Rights;

(b) Iceland, not being bound by references to the Union environmental acquis, acknowledges to implement the BMVI in line with Paris Agreement and UN Sustainable Development Goals.

Article 4

Specific application of provisions of the BMVI Regulation

1. The Commission shall allocate to Iceland an additional amount referred to in Article 10(1)(b) of the BMVI Regulation provided that the conditions of Article 14(2) of the BMVI Regulation are complied with 2 years after the start of the participation of Iceland in the instrument.

2. Deadlines referring to the entry into force of the BMVI Regulation are to be understood as the date as of which this Agreement enters into force.

Article 5

Enforcement

1. Decisions taken by the Commission which impose a pecuniary obligation on persons other than States shall be enforceable in the territory of Iceland.

   Enforcement shall be governed by the rules of civil procedure in force in Iceland. The order for its enforcement shall be appended to the decision by the national authority without any formality other than the verification of the authenticity of the decision.

   The government of Iceland shall designate a national authority for this purpose and shall make known to the Commission such designation, which shall in turn inform the Court of Justice of the European Union.

   Once these formalities have been completed on application by the Commission, the Commission may proceed to enforcement in accordance with Icelandic law, by bringing the matter directly before the competent authority.

Enforcement may be suspended only by a decision of the Court of Justice of the European Union. However, the courts of Iceland shall have jurisdiction over complaints that enforcement is being carried out in an irregular manner.

2. Judgments of the Court of Justice of the European Union delivered in application of an arbitration clause contained in a contract or grant agreement within the scope of this Agreement shall be enforceable in Iceland in the same manner as European Commission decisions referred to in paragraph 1.

Article 6

Protection of the financial interests of the Union

1. Iceland shall:

   (a) counter fraud and any other illegal activities affecting the financial interests of the Union through measures which shall act as a deterrent and be such as to afford effective protection in Iceland;

   (b) take the same measures to counter fraud and any other illegal activities affecting the financial interests of the Union as it takes to protect its own financial interests; and

   (c) coordinate its action aimed at protecting the financial interests of the Union with the Member States and the European Commission.

2. The competent Icelandic authorities shall inform the European Commission or the European Anti-Fraud Office ('OLAF') without delay of any fact or suspicion which has come to their notice relating to an irregularity, fraud or other illegal activity affecting the financial interests of the Union. They shall also inform the European Public Prosecutor's Office ('EPPO') when those facts or suspicions concern a case that may fall within the competence of EPPO.

   Iceland and the Union shall ensure effective mutual assistance in cases where there are investigations or judicial proceedings by the competent authorities of the Union or Iceland, in accordance with the applicable legal framework, concerning the protection of each other's financial interests within the scope of this Agreement.

3. Iceland shall adopt equivalent measures to those adopted by the Union in accordance with Article 325(4) of the TFEU that are in force at the date of signature of this Agreement.

4. The exchange of information between the European Commission, OLAF, the EPPO, the Court of Auditors and the Icelandic competent authorities shall take place having due regard to the confidentiality requirements. Personal data included in the exchange of information shall be protected in accordance with applicable rules.

Article 7

Reviews and audits by the Union

1. The Union shall have the right to conduct technical, financial or other types of reviews and audits on the premises of any natural person residing in or any legal entity established in Iceland and receiving Union funding from the BMVI, as well as any third party involved in the implementation of Union funding from the BMVI residing or established in Iceland, in the same way as is possible in the Member States of the European Union. Such review and audits may be carried out by the European Commission, OLAF, and the Court of Auditors.

2. The authorities of Iceland shall facilitate the reviews and audits which may, if those authorities so wish, be carried out jointly with them.

3. The reviews and audits may be carried out, also after the suspension of the rights of legal entities established in Iceland derived from the application of this Agreement, or the termination of this Agreement, on any legal commitment implementing the Union budget entered before the date on which the suspension or termination takes effect.

Article 8

On-the spot checks and inspections

OLAF shall be authorised to carry out on-the spot checks and inspections in the territory of Iceland as regards the BMVI in accordance with the terms and conditions laid down in Regulation (Euratom, EC) No 2185/96 as supplemented by Regulation (EU) No 883/2013.

The authorities of Iceland shall facilitate on-the-spot checks and inspections which may, if those authorities so wish, be carried out jointly with them.

Article 9

Court of Auditors

The competence of the Court of Auditors set out in Article 287(1) and (2) of the TFEU shall extend to the revenue and expenditure related to the implementation of the BMVI Regulation by Iceland, including in the territory of Iceland.

In accordance with the requirements laid down in Article 287(3) of the TFEU and Part One, Title XIV, Chapter 1 of the Financial Regulation, the Court of Auditors shall have the possibility to perform audits on the premises of any body which manages revenue or expenditure on behalf of the Union in the territory of Iceland as regards the BMVI, including on the premises of any natural or legal person in receipt of payments from the budget.

In Iceland, audits by the Court of Auditors shall be carried out in liaison with national audit bodies or, if these do not have the necessary powers, with the competent national departments.

The Court of Auditors and the national audit bodies of Iceland shall cooperate in a spirit of trust while maintaining their independence. These bodies or departments shall inform the Court of Auditors whether they intend to take part in the audit.

Article 10

Financial contributions

1. Iceland shall make annual payments to the budget of the BMVI in accordance with the formula described in Annex I.

2. Each year, the Commission may use up to 0.75% of the payments made by Iceland to finance the administrative expenditure for staff or external staff necessary for supporting the implementation by Iceland of the BMVI Regulation and this Agreement.

3. After deduction of the administrative expenditure referred to in paragraph 2, the remaining amount of the annual payments shall be assigned as follows:

   (a) 70% to the implementation of national programmes of the Member States and Associated States;

   (b) 30% to the thematic facility referred to in Article 8 of the BMVI Regulation.

4. An amount equivalent to the Icelandic annual payments shall be used to contribute to a strong and effective European integrated border management at the external borders.

5. The Union shall provide Iceland with information in relation to its financial participation as included in the budgetary, accounting, performance and evaluation related information provided to the Union budgetary and discharge authorities concerning the Instrument.

Article 11

ETIAS

The share of the ETIAS revenues potentially remaining after covering the costs of the operation and maintenance of ETIAS, as referred to in Article 86 of the ETIAS Regulation (the "surplus"), shall be deducted from the final financial contribution of Iceland to the BMVI, in accordance with the formula described in Annex II.

Article 12

Confidentiality

Information communicated or acquired in any form whatsoever pursuant to this Agreement shall be covered by professional secrecy and protected in the same way as similar information is protected by the provisions applicable to the Union institutions and by the laws of Iceland. Such information shall not be communicated to persons other than those within the Union institutions, in the Member States or in Iceland whose functions require them to know it, nor may it be used for purposes other than to ensure effective protection of the financial interests of the Parties.

Article 13

Entry into force and duration

1. The Parties shall approve this Agreement in accordance with their own procedures. They shall notify each other of the completion of those procedures.

2. This Agreement shall enter into force on the first day of the first month following the day of the last notification referred to in paragraph 1.

3. To ensure continuity in providing support in the relevant policy area and to allow implementation to start from the beginning of the 2021-2027 multiannual financial framework, the measures covered by the BMVI Regulation can start before entry into force of the Agreement and at the earliest as of 1 January 2021.

4. This Agreement may only be amended in writing by common consent of the Parties. The entry into force of the amendments will follow the same procedure as that applicable for the entry into force of this Agreement.

5. Notwithstanding paragraph 4 of this Article, the Mixed Committee established under Article 3 of the Association Agreement with Iceland and Norway shall be empowered to negotiate and adopt the necessary amendments to Article 2(1)(a) in case of notification in accordance with Article 15(2) because no agreement has been reached pursuant to Article 2(2).

Article 14

Dispute settlement

Where a dispute arises with regard to the application of this Agreement, the procedure set out in Article 11 of the Association Agreement with Iceland and Norway shall apply.

Article 15

Suspension

1. The rights of legal entities established in Iceland derived from the application of this Agreement may be suspended in line with paragraphs 5-7 of this Article by the Union, in case (a) of full or partial non-payment of the financial contribution due by Iceland; (b) of non-compliance with Article 2(3), including a decision not to accept an act notified under that provision; or (c) where the Financial Regulation is the subject of an amendment, a repeal, a replacement or a recast relevant to the BMVI and no agreement has been reached pursuant to Article 2(2) within 30 days of the entry into force of the amendment, repeal, replacement or recast of the Financial Regulation.

2. The Union shall notify Iceland of its intention to suspend the rights of legal entities established in Iceland derived from the application of this Agreement and, in this case, the matter shall be officially entered on the agenda of the Mixed Committee established under Article 3 of the Association Agreement with Iceland and Norway.

3. The Mixed Committee shall be convened and the meeting shall take place within 30 days after the notification referred to in paragraph 2. The Mixed Committee shall have 90 days to settle the matter, counting from the date of adoption of the agenda on which the matter has been placed according to paragraph 2. Where the matter cannot be settled by the Mixed Committee within the 90-day deadline, this deadline shall be extended by 30 days with a view to reaching a final settlement.

4. Where the matter cannot be settled by the Mixed Committee within the deadline provided for in paragraph 3, the Union may suspend the rights of legal entities established in Iceland derived from the application of this Agreement as referred to in paragraphs 5-7.

5. In case of suspension, legal entities established in Iceland shall not be eligible to participate in award procedures not yet completed when the suspension takes effect. An award procedure shall be considered completed when legal commitments have been entered into as a result of that procedure.

6. The suspension does not affect the legal commitments entered into with the legal entities established in Iceland before the suspension took effect. This Agreement shall continue to apply to such legal commitments.

7. Any operation necessary to protect the financial interest of the Union and to ensure the fulfilment of financial obligations stemming from commitments entered into under this Agreement prior to the suspension, may be carried out also after the suspension.

8. The Union shall immediately notify Iceland once the amount of the financial or operational contribution due has been received by it, when the non-compliance with Article 2(3) has ended or when the matter related to the Financial Regulation is settled. The suspension shall be lifted with an immediate effect upon this notification.

9. As of the date when the suspension is lifted, legal entities of Iceland shall be again eligible in award procedures launched after this date and in award procedures launched before this date, for which the deadlines for submission of applications has not expired.

Article 16

Termination

1. Either the Union or Iceland may terminate this Agreement by notifying the other Party of its decision. The Agreement shall cease to apply 3 months after the date of such notification.

2. This Agreement shall be terminated automatically when the Association Agreement with Iceland and Norway is terminated in accordance with Article 8(4), Article 11(3) or Article 16 of the Association Agreement with Iceland and Norway.

3. Where this Agreement is terminated in accordance with paragraph 1 or paragraph 2, the Parties agree that operations where the legal commitments were entered into after the entry into force of this Agreement, and before this Agreement is terminated shall continue until their completion under the conditions laid down in this Agreement.

4. Any operation necessary to protect the financial interest of the Union and to ensure the fulfilment of financial obligations stemming from commitments entered into under this Agreement prior to its termination, may be carried out also after the termination of this Agreement.

5. The Parties shall settle by common consent any other consequences of termination of this Agreement.

Article 17

Languages

This Agreement shall be drawn up in a duplicate in the Bulgarian, Croatian, Czech, Danish, Dutch, English, Estonian, Finnish, French, Gaelic, German, Greek, Hungarian, Icelandic, Italian, Latvian, Lithuanian, Maltese, Polish, Portuguese, Romanian, Slovak, Slovenian, Spanish, and Swedish languages, each of those texts being equally authentic.

ANNEX I

Formula to calculate the annual financial contributions for the years 2021 to 2027 and payment details

1. The calculation of the financial contribution takes into account the amount referred to in Article 7(2) of the BMVI Regulation.

2. For the years 2023 to 2025 Iceland shall make annual payments to the budget of the BMVI in accordance with the following table:

(All amounts in EUR)

	2023	2024	2025
Iceland	*1 820 230*	*1 820 230*	*1 820 230*

The financial contributions referred to in this Article shall be due by Iceland irrespective of the date of approval of its national programme referred to Article 23 of the CPR.

3. The financial contribution of Iceland to the BMVI is calculated as follows for the years 2026 and 2027:

For each single year from 2020 to 2024, the figures of the nominal Gross Domestic Product (GDP) of Iceland available as of 31 March 2026 on Eurostat (GDP at current prices) shall be divided by the sum of the nominal GDP figures of all the States participating in the BMVI for each respective year. The average of the obtained five percentages for the years 2020 to 2024 shall be applied to

- the sum of the commitment appropriations from adopted budget and subsequent amendments or transfers as committed at the end of each year for the BMVI for the years 2021 to 2025,

- the annual commitment appropriations from adopted budget for the BMVI for the year 2026 made at the beginning of the year 2026 and

- the annual commitment appropriation according to the budget for the BMVI for the year 2027 as included in the draft General budget of the European Union for the 2027 financial year adopted by the Commission

to obtain the total amount to be paid by Iceland over the whole period of implementation of the BMVI.

From this amount, the annual payments effectively made by Iceland in accordance with paragraph 2 of this Annex shall be subtracted to obtain the total amount of its

contributions for the years 2026 and 2027. Half of this amount shall be paid in 2026 and the other half in 2027.

4. The financial contribution shall be paid in euro, and the calculation of amounts due or to be received shall be expressed in euro.

5. Iceland shall pay its respective financial contribution no later than 45 days after receiving the debit note. Any delay in payment of the contribution shall give rise to the payment of default interest on the outstanding amount from the due date. The interest rate shall be the rate applied by the European Central Bank to its main refinancing operations, as published in the C series of the Official Journal of the European Union, in force on the first calendar day of the months in which the deadline falls, increased by 3.5 percentage points.

ANNEX II

Formula to calculate the Icelandic share of the revenues potentially remaining as defined in Article 86 of the ETIAS Regulation

For each financial year that there is a surplus generated as defined in Article 86 of the ETIAS Regulation and ending with the 2026 financial year, the figures of the nominal Gross Domestic Product (GDP) of Iceland available as of 31 March on Eurostat (GDP at current prices) shall be divided by the sum of the nominal GDP figures of all the States participating in ETIAS for the respective year.

The average of the obtained percentages shall be applied to total surpluses generated. The 2027 Icelandic financial contribution earmarked for the Thematic facility shall be reduced by the resulting amount.