



Council of the European Union
General Secretariat

**Interinstitutional files:
2018/0249(COD)**

Brussels, 13 November 2018

WK 13777/2018 INIT

LIMITE

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COMIX**

WORKING PAPER

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WORKING DOCUMENT

From:	Presidency
To:	Ad Hoc Working Party on JHA Financial instruments
Subject:	Compilation of comments from Member States on the Borders Management and visa instrument

Following the Ad Hoc Working Party on JHA Financial instruments meeting on 29 October 2018, delegations will find a compilation of comments from Member States on the Borders Management and visa instrument.

ESTONIA

EE official comments on Articles 1-5, 7-16, 23 and Annexes II, III, IV, VI and VII of the BMVI proposal.

	Text proposed by the COM	EE comments	EE proposal for amendment
Article 1	<u>Subject matter</u>	OK	
Article 2	<u>Definitions</u>	Please define, what is "operating equipment" in Art 12(a). Is it any equipment that is/will be used in supporting integrated border management and visa policy?	
Article 3 – paragraph 3	<u>Objectives of the instrument</u> "Within the specific objectives set out in paragraph 2, the instrument shall be implemented through the implementation measures listed in Annex II."	Although the list of implementation measures in Annex II is wide enough to ensure funding for different types of measures, it is exhaustive, thus restrictive. In our opinion, as 7-year period is quite long, something unpredictable might arise that no one can think of right now, therefore it should be possible for the MSs to choose other relevant measures, if deemed necessary, within the objectives of the BMVI. Hence, we propose that the article 3(3) as well as Annex II should include the term "inter alia".	3."Within the specific objectives set out in paragraph 2, the instrument shall be implemented inter alia through the implementation measures listed in Annex II."
Article 4 - paragraph 1	<u>Scope of support</u> 1. "Within the objectives referred to in Article 3 and in-line with the implementation measures listed in Annex II, the Fund shall in particular support the actions listed in Annex III."		1."Within the objectives referred to in Article 3 and, where appropriate , in-line with the implementation measures listed in Annex II, the Fund shall in particular support the actions listed in Annex III."
Article 5	<u>Eligible Entities</u>	OK	
Article 6	<u>General principles</u>	OK	

	Text proposed by the COM	EE comments	EE proposal for amendment
Article 7 - paragraph 2	<u>Budget</u>	In general, EE supports the proposed structure to divide funding between national programmes and Thematic Facility. It is definitely more flexible approach compared to current top-up system. However, EE supports the increase of the allocation percentage for national programmes. We understand that through the Thematic Facility (Specific Actions and Emergency Actions) the additional money will be allocated to MSs' programmes, however, knowing upfront how much resources are available, is more beneficial, especially in planning stage. Furthermore, in COM's view, the top-up system might reduce administrative burden, but at least in EE case, it remains the same, because every time we get extra allocation we are obliged to get government's approval beforehand.	
Article 8	<u>Thematic Facility</u>	OK	
Article 9	<u>Scope</u>	OK	
Article 10 - paragraph 1	<u>Budgetary resources</u>	Please see the comment on Art 7(2)	
Article 10 - paragraph 2	<u>Budgetary resources</u>	OK	

	Text proposed by the COM	EE comments	EE proposal for amendment
Article 11	<u>Co-financing rates</u>	The implementing rules for the DG HOME funds under two previous financing periods (SOLID funds in 2007-2014 and Internal Security Fund in 2014-2020) have included a possibility for the Member States to finance the technical assistance at the initiative of Member States up to 100% from the Union budget. For the next period, the TA rules seem to have been aligned with the structural and investment funds as all of these funds (incl DG HOME funds) fall under the scope of the CPR. In order to use Structural Funds TA in EE in current period, the administration must add national co-financing 15%. Although the COM has explained several times that the flat-rate TA (6%) in 2021-2027 will be financed from the EU budget in full amount, EE would like the reference to be added to the BMVI regulation. The co-financing rate has not been determined in the CPR. Furthermore, as administrative burden is increasing for HOME funds under CPR umbrella, it is important to maintain current approach and fund all TA (including technical assistance actions referred to in Art 32 of the CPR) in full from EU budget.	8. „The contribution from the Union budget to the technical assistance at the initiative of Member States may amount to 100% of the total eligible expenditure.“
Article 12 paragraph 1	<u>Programmes</u>	The wording in the last sentence of Art 12 (1) refers that funding must be used for all measures listed in Annex II. /"In defining the priorities of their programmes, the Member State shall ensure that the implementing	

	Text proposed by the COM	EE comments	EE proposal for amendment
		<i>measures as set out in Annex II are <u>adequately addressed</u>."/</i> The COM has explained that this is not their intention. We propose either soften the wording or delete the last sentence.	
Article 12 paragraph 3	<u>Programmes</u> 3. "It shall consult the European Border and Coast Guard Agency on the draft programmes with a specific emphasis on the activities included under operating support in line with Article 3(2)(a) to ensure consistency and complementarity of the actions of the Agency and those of the Member States regarding border management as well as to avoid double financing and to achieve cost efficiency."	Please specify the "it".	3. „It The Commission shall consult the European Border and Coast Guard Agency on the draft programmes with a specific emphasis on the activities included under operating support in line with Article 3(2)(a) to ensure consistency and complementarity of the actions of the Agency and those of the Member States regarding border management as well as to avoid double financing and to achieve cost efficiency.“
Article 12 paragraph 12 (a)	<u>Programmes</u>	The proposal foresees the obligation to verify the technical descriptions by EBCGA before the launch of the procurement of operating equipment. EE understands and supports the idea that MS's equipment should be interoperable with the EBCGA assets. However, we propose that the exception should be foreseen for small-scale equipment or even purchases below the threshold for international procurement. Verification requirement rises	

	Text proposed by the COM	EE comments	EE proposal for amendment
		practical issues: for example, time limits need to be set for the EBCGA and procedure what would be the procedure, if MS and EBCGA disagree on technical description, should be agreed on.	
Article 12 paragraph 12 c	<u>Programmes</u> 12 (c) "Member States may decide to purchase items for multi-purpose maritime operations supported by the instrument, provided that these items when operated by the relevant national authorities are involved in border surveillance operations at least 60 % of the total period of use for national purposes within a year. These items shall be registered at the technical equipment pool of the European Border and Coast Guard Agency in view of making these assets available in accordance with Article 39(8) of Regulation (EU) 2016/1624."	Purchase and use of multipurpose equipment helps to save resources and increase ability to better tackle the EU wide challenges. As far as EU financing, there are mainly 2 possibilities how to purchase multipurpose assets: 1) the BMVI regulation as well as CPR foresees the possibility to blend different funds in order to implement large-scale projects. This, however, is very burdensome both for the responsible authority as well as for the beneficiary (multiple eligibility rules, multiple reporting, etc). Although the audit trail is important, the multipurpose use of funds should not be hindered by overburdening reporting requirements. 2) As a novelty, the other possibility has been foreseen in the BMVI regulation Art 12 (12) (c): <u>possibility to purchase multipurpose assets for maritime operations, and report only in framework of BMVI</u>, if the assets are used at least 60% per year for border surveillance by the MS. EE strongly supports the second option, and we would like to <u>expand this</u>	Art 12 (12) (c) "Member States may decide to purchase multi-purpose assets items or develop ICT-systems for multi-purpose maritime operations supported by the instrument, provided that these items when operated by the relevant national authorities are involved in border surveillance operations used at least 60 % of the total period of use for national purposes within a year. These items shall be registered at the technical equipment pool of the European Border and Coast Guard Agency in view of making these assets available in accordance with Article 39(8) of Regulation (EU) 2016/1624." OR/AND amend Art 24 (1) (a) "An action that has received a contribution under the instrument may also receive a contribution from any other Union programme, including Funds under shared management, provided that the contributions do not cover the same costs. The rules of each contributing Union programme shall apply to its respective contribution to the action. The cumulative funding shall not exceed the total eligible costs of the action and the support from the different Union programmes may be calculated

	Text proposed by the COM	EE comments	EE proposal for amendment
		<u>simplification to other domains and instruments</u>. It is unclear why maritime domain is considered to be more important than other domains that are closely connected to border surveillance, e.g. prevention of terrorism. <u>EE finds that simplification and avoidance of non-discriminatory rules across different domains and EU funds should be an overall aspiration inducing synergies.</u> To illustrate with an example: when purchasing an item or IT-system (e.g. SIS II) that would be used in majority for the purpose of the BMVI but to smaller extent also for the purpose of ISF, it should be possible to finance the purchase and operational costs in full from the BMVI. The COM has even said in the ISF Ad-Hoc WG that SIS II and VIS should be financed in full from BMVI, because there is more money, but the wording in current BMVI nor ISF proposals does not support it. We suggest to change wording in Art 12 (12) (c) and/or add an additional section in the Article 24 (1).	on a pro-rata basis in accordance with the documents setting out the conditions for support." b) "Member States may decide to purchase equipment or develop ICT-systems for multi-purpose use provided that these items and systems when operated by the relevant national authorities are in a majority used for the actions which fall under the scope of the Fund or instrument. The costs of these actions may be included in full to the Fund or instrument."
Article 13	<u>Mid-Term Review</u>	OK	
Article 14	<u>Specific Actions</u>	OK	
Article 15	<u>Operating support</u>	OK	
Article 16	<u>Special Transit Scheme</u>	OK	
Annex II	<u>Implementation measures</u>	OK	

	Text proposed by the COM	EE comments	EE proposal for amendment
Annex III	<u>Scope of support</u>	In EE's opinion, construction of border fences equipped with surveillance cameras and sensors as well as patrol lanes at the external border of the EU are eligible and is also in line with the EU Charter of Fundamental Rights. The Eastern land border is in the remote area in middle of forest and swamps which makes the border surveillance challenging and provides an easy access to the EU for smugglers, and is especially convenient for human trafficking. Although the border guards are doing exceptional job, the border has been equipped with cameras, and drones are used for surveillance, it takes time to react to the illegal border crossings, as cordons are further away. The delay fence at the external border would give border guards more time to react to alerts appropriately. In conclusion, EE supports the proposed wording in Annex III.	
Annex IV	<u>Higher co-financing rate</u>	EE would like to add measures enhancing interoperability to actions listed in Annex IV as this is an EU priority.	10. "Measures which aim at improving the interoperability of IT systems and communication networks."
Annex VI	<u>Types of intervention</u>	OK	
Annex VII	<u>Eligible actions under Operating Support</u>	OK	

FINLAND

General

FI is of the opinion that the BMVI proposal has to be examined, and to some extent to be decided, in connection with the proposal on the European Border and Coast Guard.

Article 3

Par. 3:

The text indicates that the Annex II is exhaustive. FI is of the opinion that the MS should be allowed leeway in the implementation in order to better reflect the national and regional needs.

Annex II

Par. 1.b: The FI language version contains an error. While the English version refers correctly to the European Border and Coast Guard the Finnish version refers incorrectly to the European Border and Coast Guard Agency.

Article 7

Par. 2:

FI supports the 75%-25% distribution of the funds between the National Programmes and the Thematic Facility.

The proposed Thematic Facility appears large in the light of the increased financing and the renewed mandate for the EBCG and in particular EBCGA (COM(2018) 631 final). The EBCGA offering capacity and resources for emergency situations and sudden changes in the operating environment FI sees that the BMVI instrument, in turn, should serve as a long-term investment tool for the MS in order to improve their capacities and capabilities in border management. Furthermore, the 75-25 distribution would better reflect the fact that the MS are responsible for the external borders of the EU.

Article 10

Par. 1(a):

This article refers to the allocation key presented in Annex I. FI comments regarding the allocation key are presented below (point "Annex I").

Par. 2:

FI supports adding the unallocated amounts to the amount referred to in Article 7(2)(a) instead of Article 7(2)(b).

Article 11

The 100 % financing of the Technical Assistance for the Member States should be clearly mentioned in the regulation.

Article 12

Par. 2:

In principle FI supports the involvement of the agencies. However, it must not cause delays to the approval of the Programmes. One mean towards this end could be clearly defined time-limits for the agencies to respond to these consultations.

Proposal: "2. The Commission shall ensure that the European Border and Coast Guard Agency and where appropriate, eu-LISA, are ~~associated~~ supporting and advising with the process of developing the programmes of Member States at an early stage, in so far as it falls within the agencies' competencies."

Par. 3:

Proposal: "3. It shall consult the European Border and Coast Guard Agency on the draft programmes with a specific emphasis on the activities included under operating support in line with Article 3(2)(a) to ensure consistency and complementarity of the actions of the Agency and those of the Member States regarding border management as well as to avoid double financing and to achieve cost efficiency. The consultation should be conducted in timely manner without delaying the approval and implementation of the programmes."

Par. 10:

FI would like to avoid unnecessary consultations in cases where there is an on-going activity such as a liaison officer -project.

Proposal: "10. Whenever a Member State decides to implement new projects with or in a third country with the support of the instrument, the Member State concerned shall consult the Commission prior to the start of the project."

Par. 12:

FI proposes the wording of this paragraph to be changed as follows:

"As regards operating equipment, including means of transport, and communication systems required for effective and secure border control purchased with the support of this instrument, the following shall apply:

(a) before launching the purchase procedures to acquire operating equipment, including means of transport, and communication systems with the support of the instrument, the Member States shall ensure that this equipment complies with the standards established by the European Border and Coast Guard Agency, where such standards exist, and shall verify with the European Border and Coast Guard Agency their technical specifications with the aim of ensuring interoperability of the assets used by the European Border and Coast Guard; This is applicable only to the standards which have been developed and approved jointly by the Agency and the Member States. The standards extend only to the equipment that is meant for the operations coordinated by the European Border and Coast Guard Agency and do not prevent procurement of equipment for solely national border guarding operations. The approval process must not slow down the implementation of the procurement. If the European Border and Coast Guard agency has not specifically expressed its opinion to the equipment, including modifications to the technical specifications, in 30 days after Member State has submitted technical specifications, the purchase has been tacitly approved;

(b) all large-scale operating equipment for border management, such as aerial and maritime means of transport and surveillance purchased by the Member States with the support of the Fund shall be registered in the technical equipment pool of the European Border and Coast Guard Agency in view of making these assets available in accordance with Article 39(8) of Regulation (EU) 2016/1624 based on agreement between European Border and Coast Guard Agency and Member States in the framework of the bilateral annual negotiations;

(c) Member States may decide to purchase items for multi-purpose maritime operations supported by the instrument, provided that these items when operated by the relevant national authorities are involved in border surveillance operations at least 60 % of the total period of use for national purposes within a year. These items shall be registered at the technical equipment pool of the European Border and Coast Guard Agency in view of making these assets available in accordance with Article 39(8) of Regulation (EU) 2016/1624;

(d) in order to support the coherent capability development planning for the European Border and Coast Guard and the possible use of joint procurement, Member States shall communicate to the Commission ~~as part of the reporting in line with Article 27~~ the available multiannual planning for the equipment expected to be purchased under the instrument. The Commission shall transmit this information to the European Border and Coast Guard Agency. The Member States update the plans based on the national planning and decision-making processes, when necessary.

Par. 14:

FI proposes to change the wording as follows: "Member States shall pursue in their initial National Programmes in particular the actions listed in Annex IV..."

Par. 15:

The intervention types must not become a structural hindrance in the way the current national objectives are.

Article 15

The role of the EBCGA should not slow the process.

Annex V

The performance indicators appear very succinct. Also, they do not appreciate the outmost tier of the four-tier-border-control model as a number of illegal entries are stopped at the point of origin by the work conducted by the liaison officers.

Annex VI

The intervention types must not become a structural hindrance in the way the current national objectives are.

Annex VII

FI proposes rental costs to be included in the Annex.

FRANCE

Article 10 – Budgetary resources

Article 10(1): we would like clarification of the implications of the word 'indicatively' in relation to the indicated distribution and for it to be possible for the estimated amounts of the national envelopes to be provided by the Commission.

Article 10(2): we would like this paragraph deleted.

Article 11 – Co-financing rates

Article 11(2): where are the specific actions planned for the BMVI listed (Annex IV or elsewhere)?

Article 11(3): does the reference to Annex IV mean that the list covers actions that may be chosen by the Member States directly and implemented in their national programmes with a 90 % co-financing rate (or does it refer only to actions selected in the framework of specific actions of the thematic facility?).

Article 11(6): we would like clarification of this provision: does it mean that the Commission will be able to decide the co-financing rate and the maximum amount applicable to each type of action for each Member State, for its proposed national programme? If so, what criteria would the Commission's decision be based on? Does this mean that co-financing rates will be fixed once for each type of action, rather than individually for each action which is submitted throughout the programme's duration?

Article 11(7): we would like clarification of this provision: does it mean that the Commission will be able to decide, for each specific objective of each Member State, whether the co-financing rate is to be applied to the total contribution or only to the public contribution? If so, what criteria would the Commission's decision be based on?

Article 12 - Programmes

France has reservations about the arrangements for implementing the shared management of the BMVI laid down in this article. These arrangements effectively impose prior association, consultation and validation procedures on the Commission and the agencies in a number of strategic phases. There is a very high risk that they will both slow down the adoption of national programmes and block the implementation of useful measures. In addition, the arrangements appear to prevent the specific situations within the Member States from being genuinely considered in their national programmes. What is more, the participation in the national programme of other partners on the basis of the Partnership Agreement which the Commission has to approve beforehand would present real problems for the adoption and implementation of the national programme (Article 6 of the CPR, in particular '*economic and social partners*' and '*bodies representing civil society*').

Article 12(1): we would like to know the extent to which it will be possible to take the Member State's own situation into account in the priorities shaping its national programme.

Article 12(2): we would draw attention to the time-scale of this consultation and the weakening of the national programme development process that it implies. It is not unusual for the agency's response time to make it difficult to carry out work thoroughly (e.g. problems encountered with technical specifications for the specific actions in the current framework). At what stage will the agencies be consulted and what is the status of their opinion (binding or non-binding) for the Commission and the Member State?

Article 12(3): we would draw attention to the scheduling of this consultation and the weakening of the national programme development process that it implies. What criteria and methods will be applied in order to assess the components of the national programme to ensure 'consistency and complementarity of the actions of the Agency and those of the Member States' and 'to avoid double financing and to achieve cost efficiency'?

Article 12(4): What considerations will the Commission take into account in order to determine whether or not it will involve the Agency? What would this involvement consist in? What form would it take, and with what time-scale? What implications, and in particular, what binding effects, might it have?

Article 12(9): We welcome the possibility offered here of reallocating appropriations for the benefit of priorities identified in the Schengen evaluation. **However, it must be understood that it remains for the Member State to decide on this reallocation.** The involvement of the agencies is important, but the terms 'cooperation' and 'consultation' are too vague and must be clarified in order to establish the details of their role here.

Article 12(10): for projects with or in third countries, clarification is needed regarding the arrangements and the time limits within which consultation must take place with the Commission before the project is launched. We would not want a requirement for assent to delay the implementation of such projects.

Suggested wording:

*'Whenever a Member State decides to implement projects with or in a third country with the support of the instrument, the Member State concerned shall **inform** ~~consult~~ the Commission prior to the start of the project.'*

We would draw attention particularly to Article 12(12) in that the arrangements proposed seem complicated in the extreme, with the risk that they could undermine operational effectiveness.

We request clarification of the following points:

Article 12(12): (a) The arrangements and time limits for ensuring that these standards exist and are available and that the equipment complies with them. We stress that the standards established by the Agency must be transparent and accessible, and that the programmes' implementation timetables may conflict with changes in the standards during the purchase procedure. In such a case, can we be assured that the Member State will not be penalised: what version of the standards is applicable for verification of the equipment's compliance (is it the version that was in force before the purchase procedure was launched?)?

(b) The justification of the requirement, since it goes beyond the current requirements of Regulation 2016/1624.

(c) The link with the exclusions for equipment used, in whole or in part, for customs control purposes.

Furthermore, the 60 % minimum could be tricky to calculate, given the variety of maritime operations and the possibility of objectives changing during the course of a mission. It might be preferable to state that the equipment is 'mostly' used for maritime border surveillance.

We also suggest extending this possibility outside of maritime operations (to air operations for instance).

(d) This multiannual planning for border management, which in essence involves forecasting, seems ill-suited to the need for responsiveness and flexibility already referred to in relation to this fund. It is necessary to look at the requirement to provide this information in context and to determine at what stage of national planning it could be provided (estimated provisional purchase scenario? accounts planning? procurement procedure launch? other?).

Suggested change in wording:

*'in order to support the coherent capability development planning for the European Border and Coast Guard and the possible use of joint procurement, Member States shall **strive to communicate** to the Commission as part of the reporting in line with Article 27, **and where this data is available, the available a multiannual planning for the equipment [depending on the cost of the equipment?] expected to be purchased under the instrument in the coming year.** The Commission shall transmit this information to the European Border and Coast Guard Agency.'*

Article 12(13): the standards and their application over time to co-financed projects should be specified, assuming that they may change. It would be preferable for the Frontex mandate to include a section dedicated to this issue.

Article 12(15): it should be specified whether, within this classification system, projects will have to be categorised under one type of intervention only. If a project corresponds to several types of intervention, should only one be selected, or should they all be indicated? What consequences would this classification have for the project? For the national programme? For the Member State?

Article 13 - Mid-term review

We would like to ask for clarification on the following points:

Article 13(2): the notion of 'payment applications submitted' to meet the 10 % requirement. Insofar as many projects under this fund are multiannual (large-scale equipment, IT systems, etc.), the beneficiaries will have submitted no, or very few, balance payment applications to the managing authority in 2024, or any interim payment applications to the Commission aside from advances (i.e. pre-financing for beneficiaries) and any payments on account. Under this interpretation, it is already certain the 10 % requirement will not be met.

Suggested wording:

'If at least 10 % of the initial allocation of a programme referred to in Article 10(1)(a) has not been covered by interim payment applications submitted in accordance with Article 85 of Regulation (EU) No .../... [CPR], the Member State concerned shall not be eligible to receive the additional allocation for its programme referred to in paragraph 1.'

Article 13(3): how and to what extent the 'progress in achieving the milestones of the performance framework and identified implementation shortcomings' will be taken into account. Furthermore, will the Commission allocate more funds from the thematic facility (through specific actions, Union actions, etc.) to Member States that have met their objectives, as a kind of 'reward' and/or through a 'penalty' system, or will it do the opposite and give a preferential allocation to Member States that are behind in order to help them catch up?

Article 15 - Operating support

We would like to ask for clarification on the following points:

Article 15(2): the basis for setting 30 % of the allocated amount as the maximum to be used for operating support in the national programme [*in the ISF Borders and Visa instrument, the maximum for operating support is currently 40 %*], whilst expensive European-level IT systems to be set up and kept operational are on the horizon, which are likely to require significant investment and generate significant operating costs in the Member States (EES, ETIAS, VIS, SIS II, Eurodac, etc.).

Article 15(4): the scope of the consultation of the Agency before the programmes are approved; the specific arrangements for assessing operating support needs.

On this last point, Member States' needs in terms of operating support should be taken into consideration more than the 'baseline situation'.

*'Member States shall justify in the programme and in the annual performance reports as referred to in Article 27 the use of operating support to achieve the objectives of this Regulation. Before the approval of the programme, the Commission shall, following a consultation of the European Border and Coast Guard Agency as regards the Agency's competencies in accordance with Article 12(3), assess the **needs of baseline situation** in the Member States which have indicated their intention to use operating support, taking into account the information provided by those Member States and, where relevant, the information available in the light of Schengen evaluations and vulnerability assessments, including the recommendations following Schengen evaluations and vulnerability assessments.'*

Article 15(6): in order to ensure an adequate level of predictability and legal certainty, we suggest that revision should take place through implementing acts.

*'To address unforeseen or new circumstances or to ensure the effective implementation of funding, the Commission shall be empowered to adopt ~~delegated~~ **implementing** acts in accordance with Article 30(2) ~~29~~ to amend the specific tasks and services in Annex VII.'*

Article 23 - Emergency assistance

Member States would benefit from having clearer information on the eligibility of certain situations for emergency assistance.

We suggest the addition of a provision establishing the information which must be sent to Member States in order to facilitate their access to emergency assistance. Suggested wording:

'5 (new). The Commission shall regularly inform the Member States of the available means for emergency financial assistance and the types of action which may be eligible.'

Annex IV - Actions eligible for higher co-financing in accordance with Article 11(3) and Article 12(14)

We would like to ask:

- whether the actions listed in Annex IV necessarily fall under the category of specific actions, or whether they can also be included by Member States in their national programming and thereby benefit from 90 % co-financing;
- for clarification of the practical arrangements for 'purchasing of operating equipment through joint procurement schemes with the Agency' (1).

Annex VI – Types of intervention

Within this classification system, will projects have to be categorised under one type of intervention only? If a project corresponds to several types of intervention, should only one be selected, or should they all be indicated? What consequences would this classification have for the project? For the national programme? For the Member State?

Annex V - Core performance indicators referred to in Article 25(1)

Regarding Annexes V and VIII:

- Without challenging the principle used, we would like to see a general streamlining of the evaluation work, reports and indicators in particular. The performance indicators, but also output and result indicators, should be established in such a way that they do not represent an excessive administrative burden for managing bodies or beneficiaries. We are in favour of simplification.
- Ideally, there should be a specific and technical discussion on the reports and the performance, output and result indicators.
- We enter a general reservation on Annexes V and VIII; drafting suggestions will be made at a later stage.

In addition, it would be preferable to ensure:

- that the indicators required from the Member States are not retroactive,
- and that there is a more limited number of indicators, to ensure a good balance with the administrative burden.

Indicator (b)(1) 'number of persons using fraudulent travel documents detected at consulates supported by the Fund': providing this indicator seems complicated and requires considerable data-gathering work, for a value which is not very relevant in terms of performance. Indeed, in certain third countries it is not difficult to obtain a passport to then be able to apply for a visa. This raises the issue of fraudulently obtained genuine documents and the limited capacity to detect them.

Annex VIII - Output and result indicators referred to in Article 25(3)

In addition to our comments on Annex V, we would like clarification of the definition of 'IT functionalities' [(a)(7) and (b)(3)] and how they should be counted.

GERMANY

Article 10

How does the Commission calculate the amount of the proposed budget, ie. on the basis of which assumptions / what basis has it actually calculated the proposed amount?

Article 11

- General scrutiny reservation concerning Article 11 (2) et seqq.

Especially:

- o What are the arguments for increasing the amount from the EU budget for
 - o specific measures up to 90% of the total eligible expenditure?
 - o Operating support up to 100% of the eligible expenditures?
- o What are the conditions under which the EU co-financing rates are to be increased? Which criteria should apply to this?
- o Who decides or supervises compliance with the requirements?
- o Is transparency intended to the extent that the other MS are at least informed about the use in other MS?

Article 12

- Subsection 3:

It shall consult the European Border and Coast Guard Agency, and, where appropriate, eu-LISA, on the draft programmes with a specific emphasis on the activities included under operating support ~~in line with Article 3(2)(a)~~ to ensure consistency and complementarity of the actions of the Agency and those of the Member States regarding border management as well as to avoid double financing and to achieve cost efficiency.

Explanation:

It may be necessary to involve eu-LISA, as stipulated in subsections (3) and (4), because it may also be concerned.

Frontex's role will depend on new FRONTEX regulation; we therefore make a scrutiny reservation.

- Subsection 10:

Whenever a Member State decides to implement projects with or in a third country with the support of the instrument, the Member State concerned shall ~~consult~~ contact the Commission prior to the start of the project and shall jointly agree on the measure in order to discuss synergies and avoid double funding.

To be clarified:

What is the Commission's aim, and how would the consultation procedure work from the Commission's point of view? Situations should be avoided where member states depend on the Commission with regard to measures to be taken in third countries.

- Subsection 12:

General scrutiny reservation with regard to new FRONTEX Regulation

As a general rule, we understand that interoperability needs to be taken into account; however, national needs always have priority. If, when purchasing equipment, the Agency's specifications can be implemented, this will be duly taken into account.

lit b)

The Commission should clarify what "large-scale" would mean.

lit c)

The issue of the right to veto with regard to making these assets available still needs to be clarified.

lit d)

What consequence does this have for national purchases? Delays must be expected.

FRONTEX should have a long-term procurement plans, and should join member states in their procurement procedures, where necessary.

- Subsection 13:

*Training in the field of border management carried out with the support of this instrument shall be based on the relevant harmonised and quality-assured European education and common training standards for border and coast guarding, **provided these are in place.***

- Subsection 14:

We have reservations to amend Annex IV by way of delegated acts and would prefer an implementing act. Otherwise we insist on amending the provision as follows:

*Member States shall pursue in particular the actions listed in Annex IV. To address unforeseen or new circumstances or to ensure the effective implementation of funding, the Commission shall be empowered to adopt delegated acts in accordance with Article 29 to amend Annex IV. **Member states shall be involved in the procedure in an appropriate manner.***

Article 15

- Subsection 1:

"Public service for the Union" Term should be defined in Article 2 - Definition of terms

- Subsection 4:

*Member States shall justify in the programme and in the annual performance reports as referred to in Article 27 the use of operating support to achieve the objectives of this Regulation. Before the approval of the programme, the Commission shall, following a consultation of the European Border and Coast Guard Agency **and EU-LISA** as regards the Agency's competencies in accordance with Article 12(3), assess the baseline situation in the Member States which have indicated their intention to use operating support, taking into account the information provided by those Member States and, where relevant, the information available in the light of Schengen evaluations and vulnerability assessments, including the recommendations following Schengen evaluations and vulnerability assessments.*

- Subsection 6

We have reservations to amend Annex VII by way of delegated acts and would prefer an implementing act.

Article 18

- Subsection 2:

General scrutiny reservation with regard to new FRONTEX Regulation mentioned in the referenced Annexes II and III

- Subsection 3:

What specifically is meant by “financial instruments” in Article 18 (3)? What is the scope of application?

What kind of instruments are these, in the Commission’s view?

Under what conditions are they to be applied?

How does Article 18 (3) (financial instruments within blending operations) relate to Article 19 (blending operations)?

Article 19

The reference to the InvestEU Regulation is not entirely clear. Both regulations should be applied in parallel. There is a risk that the rules of the BMVI will be circumvented. What is the relationship between the BMVI and InvestEU?

Annex II

General scrutiny reservation with regard to new FRONTEX Regulation

Annex III

General scrutiny reservation with regard to new FRONTEX Regulation

Annex IV

General scrutiny reservation with regard to new FRONTEX Regulation

Annex VII

General scrutiny reservation with regard to new FRONTEX Regulation

Annex VIII

The number of indicators should be reduced to max. 50%.

GREECE

Article 10

Par. 1: We consider that the budget of paragraph 1, b) should be decreased and the amount allocated to the national programs (par. 1 a) should be increased proportionally, due to increased upfront funding needs of the NPs. This frontloading will see to substantially efficient programming, both in M-S and EU level, and timely completion of preparatory stages such as studies, authorization procedures etc.

Par. 2: Further clarifications needed regarding the procedure that will be followed for the allocation of the remaining amount.

Article 11

Par. 3: We propose that contribution from the Union budget of the total eligible expenditure for the actions listed in Annex IV is set to 100 %.

Par. 4: We propose that contribution from the Union budget of the total eligible expenditure for operating support, including the Special Transit Scheme, is set to 100%.

Par. 5: We propose that contribution for emergency assistance is 100 %.

Article 12

Further clarification should be provided regarding EBCGA's and, where appropriate, EU-LISA's involvement in the tasks described in this article. More specifically, we suggest that any advisory role of the above mentioned organizations should be stated clearly in each paragraph of Article 12.

Article 15

Par. 2: We suggest that the percentage of the amount allocated to finance operating support should be increased to 60 %. Based on the experience of the current programming period, the current percentage (40%) has not been adequate to meet the needs for operating support for ISF B&V, since the total budget has already been spent during the first two years of the N.P. implementation.

Par. 4: Further clarification is needed about the consultation of the Commission with the European Border and Coast Guard Agency to assess the baseline situation in the Member States which have indicated their intention to use operating support (scope and consequences).

Par. 5: Further clarification about the use of operating support, concerning actions related to control of borders as well as control of goods. We suggest that in such cases, synergies/complementarity with other funding instruments should be allowed.

In relation to the phrasing of the paragraph we would suggest the following: *“Without prejudice to Article 4(3)(c), operating support shall be concentrated on ~~specific~~ tasks and services as ~~laid down~~ indicatively listed in Annex VII.*

Article 23

Par. 2: We express our reservation regarding the term “decentralized agencies”.

Annex V: Reservation concerning indicator of paragraph (a), subparagraph (1). We consider that the indicator is not consistent with the program performance reporting needs.

Annex VII: par. (a): We suggest that costs related to real estate, including rental and depreciation should be added to paragraph (a).

HUNGARY

Article 3 (Objectives of the instrument)

- 1.1 Existing provisions of the Internal Security Fund currently do not allow or allow only in a limited extent for Member States to implement infrastructure developments at border crossing points, IT investments, and border surveillance equipment improvements at internal borders where border controls have not yet been abolished. In the past, this has caused significant problems on the Hungarian-Romanian and Hungarian-Croatian border sections.

Article 4 (Scope of support) and Annex III

- 1.2 In line with the findings made in Article 3, we disagree with the proposal in Article 4 (3) (a) that at internal borders where border control has not yet been abolished those measures that are set out in paragraph 1 (a) of Annex III shall not be eligible. For this reason, it is necessary to enable, even in the narrower context, the provision of financial support for these border sections, thus guaranteeing the smooth flow of legitimate travellers and the more effective action against irregular immigration, in particular the effective prevention of cross-border organized crime.
- 1.3 In order to effectively prevent irregular migration, awareness-raising activities and campaigns in third countries of stay are of great value added, giving a realistic picture of disadvantaged travellers to the dangers of illegal migration and lies shamed by smugglers, so it would be desirable to make a separate reference in this proposal in the Annex III.

Article 7 (Budget)

With regard to the Integrated Border Management Fund, we disagree with the proposed financial envelop in Article 7 that 60% of the financial allocation of the implementation period 2021-2027, and 40% for the Thematic Facility. In our view, on the contrary, much more of the available resources should be devoted to national programs. Member States have to face different challenges because of their various geographic conditions and other circumstances, so the priorities may vary from one Member State to another. For this reason, we consider the 80-20% distribution key to be acceptable.

Article 8 (General Provisions for the Thematic Facility)

In Article 8 (3) to (4), the Commission refers to the possible ineligibility of the measures financed by the Thematic Facility in the case where, according to Article 258 TFEU, the Commission considers that a Member State has failed to fulfil its obligations under the Treaties and has issued a reasoned opinion on the matter. It is proposed to revise this provision since a Member State's failure to fulfil its obligations must be established by the Court of Justice of the European Union following the proper procedure, and in this connection the Commission's preliminary opinion cannot be relevant. Nor does the regulation reveal how the area affected by the infringement and the measure that is not eligible can relate to each other. Please illustrate the above with examples.

Article 12 (Programs)

- a. Particularly problematic may be the procedure whereby the two Agencies can comment and make recommendations, in addition to the Commission, to the draft programs and their modifications prepared by the Member States. In our view, the European Border and Coast Guard Agency plays an over-emphasized role.
- b. In relation to Article 12 (10), in our view it needs to be clarified that the procedure for consultation of the Commission in the proposal is intended to avoid duplication of funding from EU funds and projects to be implemented jointly by the Member States with third countries or the Commission wishing to have wider powers. In the case of preliminary Commission consultations on the implementation of Member States' planned projects in third countries, it is unclear when, in what form and how they will be carried out.

Article 13 (Mid-term review)

We are concerned that the evaluations should be completed by 31 March 2024, as the implementation period of the programs is much longer (until 30 June 2029) than the programming period. Based on the fact that the selection of projects, the contracting of Grant Agreements and the implementation of public procurement procedures by the Beneficiaries within the projects take significant time, the actual commence of the real implementation of whole program will expectedly start at the first part of 2022.

Therefore such an early implementation of the evaluations cannot give an objective picture of the situation in the Member States as the outputs and results of the projects will be available in a later phase; consequently any transfers deemed necessary will not be well-founded. In view of this we suggest that the date should be postponed to at least one year later.

Article 14 (Specific measures)

The proposed regulation is acceptable, but it is inevitable to clarify the rules of the grant procedure.

Article 15 (Operating support)

- a. Reducing the operating support from 40% (as it is in the current period) to 30% is highly unacceptable.
- b. The commission mentioned at the meeting that under maintenance even fuel costs may be interpreted as eligible, but the framework is not yet clear (e.g. with the maintenance cost of a vehicle the fuel cost during the project period could be eligible?).
- c. Eligible activities include training in operating costs, which, according to the Commission's prior information, should include training that are linked to operating support. Further clarification is required.

Article 23 (Emergency assistance)

Our proposal is that the sources of Emergency assistance could be used in accordance with the European Solidarity Fund's practice. That is, activities which have already been completed and have been disbursed before the application for emergency assistance can also be supported. The reason behind is that urgent situation requires an immediate response and there is no time to start the action after a complicated, lengthy application and decision process.

Comments on attachment

Annex VIII.

Under point a) paragraph 7., the measurement of 'number of IT functionalities developed' is unclear, further definition is required.

LATVIA

Latvia would like to express a general remark in regard to the rules foreseen for the Home affairs funds under the Common provision regulation (CPR) in relation to enabling conditions as a precondition for applicability to financing. Substantial uncertainties still remain in regard to the application of the fourth enabling condition as mentioned in the Annex III of the proposal for regulation laying down CPR. It is unclear what exactly is understood in terms of practical fulfillment under the fourth enabling condition "Implementation and application of the United Convention on the rights of persons with disabilities in accordance with Council Decision 2010/48/EC" and what kind of impact will this condition have on the outputs planned under the Home affairs funds.

Article 13: Mid-term review

Taking into account lessons learned during previous programming period for the EU Solidarity Funds and the current programming period for Home affairs funds, as well as bearing in mind the new approach proposed in the Regulation regarding consulting the EU Agencies in the process of programming, it can be said with certainty that the implementation of the National programmes will not start on time. Therefore we would like to **suggest** that the implementation date should be postponed for at least one year.

Article 23: Emergency assistance

Latvia **does not oppose** to the possibility provided for in Article 23 of the Regulation, if necessary, to support the activities of the EU Agencies in the form of grants. At the same time we believe it is important to clarify the source of financing of the grants identified and the situations in which such grants could be awarded.

Annex I: Criteria for the allocation of funding to the programmes under shared management

Latvia **does not support** the distribution key specified in Annexes I of the proposal for Regulation establishing Border management and visa instrument. We believe that the distribution key is unfair to countries with large external land and sea borders and a low threat factor. Namely, a coefficient of 0.5, which is 10 and 16 times smaller than the coefficient for a border with a high and critical risk, is applied for the borders with a low threat. Even for a medium-threat border, the coefficient is 6 times smaller. At the same time the needs and requirements for the protection of the external borders in places with low risks are not 10 or 16 times smaller. In order to ensure the fairness and proportionality of the distribution key, Latvia considers that the coefficient for low threat borders should be set at a limit of not less than 1.

LITHUANIA

Article 16 „Operating support for the Special Transit Scheme“:

"2. The resources allocated to Lithuania for the Special Transit Scheme pursuant to Article 7(2)(a) shall be made as additional operating support for Lithuania, **in line with the eligible actions for operating support** within the programme, as referred to in Annex VII".

Eligible actions listed in Annex VII of the IBMF Regulation (borders and visa instrument) only cover staff costs (including training), maintenance and repair of equipment and infrastructure, but **investment in infrastructures is not provided.**

In all previous periods (2004-2006; 2007-2013; 2014-2020), the eligible costs for STS were (and agreed at political level):

- a) investment in infrastructures;
- b) training of staff implementing the Special transit scheme;
- c) Additional operational costs, including salaries of staff specifically implementing the Special transit scheme.

According to this, we propose to include separate Article in the Annex VII that **investment in infrastructures is also eligible action implementing STS.**

MALTA

Malta would like to put forward the following comments on Article 8, Article 10, Article 12, Article 13, Article 15 and Annex VII.

Article 8 – General provisions on the implementation of the thematic facility

Concerning support to interoperability and IT systems, Malta believes that dedicated funding should be allocated for this purpose, following the current regulation where an additional allocation, over and above the allocations for national programmes, was specifically allocated for the setting up of IT systems supporting the management of migration flows across external borders¹. In this regard, and in the context of the flexibility proposed through the thematic facility, Malta suggests that the following new paragraph 9 should be added under article 8:

Article 8(9new): The thematic facility shall also address the needs in relation to IT systems while taking into account proportionality.

Article 10 – Budgetary resources

Paragraph 2: In accordance with the position taken under Article 13(2) on the scope of the mid-term review (see below), Malta believes that paragraph 2 should be deleted and that any funds allocated for the mid-term review should be allocated to national programmes and not the thematic facility.

Article 12 – Programmes

Paragraphs 2-6: In terms of programming, when it comes to the role of the Agencies as set out in paragraphs 2 to 6, Malta would like to emphasise the importance of avoiding additional layers at the programming, monitoring and evaluation levels, to ensure more effective and efficient programming and implementation.

Paragraph(12(b): Malta reiterate the need for clear parameters to establish how and when the registration of large-scale operation equipment for border management in the technical pool of the EBCG Agency will be carried out. The primary responsibility for border control lies with the Member States and this should be reflected in the scope of the Regulation. In this context, Malta believe that the Regulation should not take a blanket approach and parameters for the registration of such equipment in the technical pool should be made clear. Furthermore, Malta considers that only equipment acquired with increased co-financing under the thematic facility and specifically with the objective of increasing the operational capacity of the EBCG Agency, should be subject to this obligation. This approach would also ensure consistency with the EBCG Regulation.

¹ As set out in Article 5 (3) (f) of Regulation (EU) No 515/2014.

Article 13 – Mid-term review

Paragraph 2: Malta reiterates that the conditionality proposed under paragraph 2 of this article is too restrictive and will constitute excessive burden on Member States, which may result in the unnecessary loss of funds. In this context, Malta believes that paragraph 2 on the percentage which needs to be reached (10%) to be eligible to receive the national allocation should be deleted as the scope of the mid-term review should not be to add undue burden on national authorities but to re-adjust national programmes in order to address any possible shift in needs.

Paragraph 3: With regard to paragraph 3, given that the nature of the sector is very dynamic and that the needs and responses can change very quickly, Malta is not convinced about the application of the performance framework to this Fund because it will not be practicable and may result in the unnecessary loss of funds.

Article 15 – Operating support

Malta considers that further flexibility is required for operating support allowing for increased focus on operational costs, training and maintenance of assets. In the spirit of flexibility, Malta believes that there is scope to leave the decision on the amount to be used for operating support at the discretion of the Member State rather than having a maximum threshold stipulated in the Regulation. However, at the very least, Malta considers that the allocated amount for operating support should be maintained at the same level of the current programming period.

Annex VII – Eligible actions for operating support

Malta requires clarification with regard to the eligible actions for operating support, and particularly to understand the implications of the last sub paragraph under paragraph (a). Malta's understanding is that operating support can be used by all Member States and that in the case of a host Member State of a Frontex Operation, that Member State can also use this Fund to cover the costs it incurs in relation to that operation.

POLAND

Article 10

PL will join the MT question on financing interoperability:

Malta would like a clarification concerning how the new regulation will provide support to “interoperability and IT systems” seeing that under the new regulation there is no specific allocation for this purpose unlike the current ISF Border regulation where an additional allocation, over and above the allocations for national programmes¹, is specifically provided for.

Article 12.2, 12.3

PL would like to make a reservation about the involvement of Frontex and EU-LISA in the process of developing Member States' programs. The need to engage the agencies can significantly extend the process of program preparation.

Article 12.10

According to the article, the realization of a project with a third country should be consulted with the European Commission.

Could you specify what the consultation will be about and how the consultations will be carried out.

Article 12.12

PL would like to ask for clarification to what extent the Fund will be allocated for tasks related to the purchase of equipment for activities that will be implemented in cooperation with the Frontex Agency. It should be clarified to what extent Member States will be able to buy equipment for their own use and in which for joint actions with the Frontex Agency.

It should be noted that each Member State is responsible for the protection and control of the border. In order to properly implement security protection and control, appropriate equipment is necessary to protect the external EU border, and for the implementation of operations for the Frontex Agency, a pool of equipment should be identified and specified accordingly.

The additional clarifications are needed as to what exactly can be bought under "operating equipment" (whether it means equipment for Frontex) and the definition of “operating support”.

Article 12.12.b

PL supports the position of MT:

*With regards to paragraph 12(b), Malta believes that further clarification is required to understand the rationale behind this provision. As stated under Article 3 above, **we are concerned with the approach proposed by the Commission to register all large-scale operation equipment for border management in the technical pool of the EBCG Agency. We believe that the primary responsibility of border control lies within the Member States and that this should be reflected in the scope of the regulation.** In this context, we believe that the Commission should not take a blanket approach and parameters for the registration of such equipment in the technical pool should be made clear. We consider that only equipment acquired with increased co-financing under the thematic facility and specifically with the objective of increasing the operational capacity of the EBCG Agency should be subject to this obligation whilst ensuring consistency with the EBCG Regulation. We also consider the existing bilateral negotiations should be respected and that the funding regulation should not go beyond such negotiations.*

Article 12.12.d (also Annex II, p. 1 b) i Annex IV p.1)

More details are needed regarding the joint procurement with the European Border and Coast Guard Agency - what is the purpose of this action and the role of the Member States?

Article 12.13

PL would like to ask for clarification on who will assess compliance of the training with European harmonized quality standards in education and joint training regarding border surveillance at coastguards and if it should be presumed that projects that do not meet the standards in question wouldn't be co-financed?

Article 15

PL would like to ask for clarification on the scope of the EC consultation with the Frontex Agency to assess the initial situation in those Member States that have expressed their intention to use operating support.

Annex IV, point 9)

PL would like to ask for clarification of the costs / financial support which can be considered eligible in the point 9) *Increasing the consular presence or representation of Member States in visa-required countries, in particular in countries where no Member State is currently present.*

Annex VI

PL would like to propose adding the code 'Development of the EUROSUR system' in Table 1, 'Codes for the intervention field intervention'.

Annex VIII

PL would like to propose adding - after point 5 - the indicator 'Number of active access positions to the EUROSUR system at the tactical and operational level (according to CIRAM 2.0)'.

PORTUGAL

Regarding the **Article 13** (*Mid-term review*), and in case the European Commission maintains its original proposal according to which the Member States must accomplish a minimum of 10% of payments until 2024 – in order to qualify for receiving the additional 10% of allocations foreseen for the midterm review – the Portuguese Delegation suggests for the inclusion of a **safeguard clause**, according to which this minimum threshold of payments will only be applicable in case all regulatory framework and associated acts, serving as the basis for the MFF 21-27, have been approved and enter into effect on the 1st of January 2021.

I ANNEX V - Core performance indicators referred to in Article 24(1)

Specific Objective 1: Better information exchange	
Indicator	Observations / Proposals
Use of EU information exchange mechanisms (number)	- It is suggested that the accounting of access to the database should also include the exchange of messages between the various MS.
Specific Objective 2: Increased operational cooperation	
Indicator	Observations / Proposals
Joint operational actions supported by the Fund (number)	
The estimated value of assets frozen, estimated value of assets confiscated with the help of the Fund	- Clarify the unit of measure: euros, thousands of euros, millions of euros? - There are some reservations in obtaining these values
Value of illicit drug seizures achieved with involvement of cross-border cooperation between law enforcement agencies	- Clarify the unit of measure: euros, thousands of euros, millions of euros? - There is difficulty in measuring in financial terms. It is suggested to revise this indicator and change the unit of measure for quantity/weight.
Number of Schengen Evaluation Recommendations with a financial implication in the area of security addressed with the support of the Fund, as compared to the total number of recommendations with a financial implication in the area of security	- Clarify unit of measure: ratio or percentage - Difficulty in collecting data by beneficiary entities. - It is highlighted the difficulty in obtaining these values reliably; their need / relevance is questioned

Specific Objective 3: Strengthened capabilities to combat and to prevent crime	
Indicator	Observations / Proposals
Number of law enforcement officials that completed training, exercises, mutual learning or specialised exchange programmes on cross- border related topics provided with the support of the Fund	
Number of critical infrastructures and public spaces of which the protection against security-related incidents has been improved with the help of the Fund.	
Number of initiatives to prevent radicalisation leading to violent extremism.	

II ANNEX VIII - Output and result indicators referred to in Article 24(3)

Specific Objective 1: Better information exchange	
Indicator	Observations / Proposals
Use of EU information exchange mechanisms	Clarify: - - If the searches to be counted are manual, automatic and ...; - If any query is recorded, regardless of the existence of occurrence - The accesses are counted even if it has resulted in an error? - What are the assumptions that allow us to incorporate into the general indicator objects differentiated: people, resources, messages and access? In this context it is important to clarify the calculate / analyze the total - It is suggested that the accounting of access to the database should also include the exchange of messages between the various MS.
Number of new connections between security-relevant databases made with support of the Fund	- It can only be counted if there are new connections to the database. It should be noted that the indicator represents difficulties in the feasibility of accounting before new connections exist.

Number of active users of EU and where relevant national security relevant information exchange tools, systems and databases added with support from the Fund, as compared to number of total users.	Clarify - Unit of measure: ratio or percentage - Better clarification of the universes to be considered in the two variables (potential, active, EM, etc.) - It should be noted the complexity that can exist in the collection of data.
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Specific Objective 2: Increased operational cooperation	
Indicator	Observations / Proposals
Number of joint operational actions supported by the Fund, including the participating Member States and authorities and broken down by area (counterterrorism, organised crime general, organised crime firearms, cybercrime, other)	
Participation in transnational networks operating with support of the Fund	
The estimated value of assets frozen, estimated value of assets confiscated with the help of the Fund	- There are some reservations in obtaining these values
Value of illicit drug seizures achieved with involvement of cross-border cooperation between law enforcement agencies.	- Clarify the unit of measure: euros, thousands of euros, millions of euros? - Clarify the universe: with or without support from the Fund? - There is difficulty in measuring in financial terms. It is suggested to revise this indicator and change the unit of measure for quantity / weight.
Number of outputs of existing transnational networks generated with the help of the Fund, such as for example manuals on best practices, workshops, common exercises	- It is suggested to disaggregate in specific typologies. It is also suggested that the common exercises performed should be included in the indicators mentioned above.
Number of Schengen Evaluation Recommendations with a financial implication in the area of security addressed with the support of the Fund, as compared to the total number of recommendations with a financial implication in the area of security	- Clarify the unit of measure: ratio or percentage? - Difficulty in collecting data by beneficiary entities. - It is highlighted the difficulty in obtaining these values reliably; their need/relevance is questioned

Specific Objective 3: Strengthened capabilities to combat and to prevent crime

Indicator	Observations / Proposals
Number of law enforcement officials that completed training, exercises, mutual learning or specialised exchange programmes on cross-border related topics provided with the support of the Fund	- "Cross-border related topics" refers only to: Counter terrorism, Organized Crime, Cybercrime, Other areas of operational cooperation?
Number of manuals on best practices and investigation techniques, standard operating procedures and other tools developed with support of the Fund as a result of interaction between different organisations across the EU	
Number of victims of crime assisted with the support of the Fund, broken down by type of crime (trafficking in human beings, migrant smuggling, terrorism, serious and organised crime, cybercrime, child sexual exploitation)	- Difficult to measure; resulting in the integration of a specific program. - The suggestion is made to replace "migrant smuggling" with "victims of illegal immigration assistance". - It is suggested to include a note / mechanism / procedure in order to avoid double counting in accounting for victims of trafficking in human beings and victims of illegal immigration assistance;
Number of critical infrastructures and public spaces of which the protection against security-related incidents has been improved with the help of the Fund	
Number of initiatives to prevent radicalisation leading to violent extremism	
Number of partnerships established with the support of the Fund contributing to improving support of witnesses, whistle-blowers and victims of crime	- Difficult to measure; resulting in the integration of a specific program.

ROMANIA

Following the meeting of 29th of October, please find below the contribution of the Romanian delegation on the articles covered during the meeting:

Article 10 – Budgetary resources

As a general remark regarding the budget resources, RO considers that the amount allocated for national programs should be higher, while the amount for thematic facility should be decreased (for example 70% for national programs vs 30% for thematic facility).

Although the allocation criteria defined in Annex 1 is clear, RO considers that a simulation exercise related to budget allocations for the national programs of the MS as well as for the thematic facility would be very useful.

In our opinion, the additional allocations of 10% granted at mid-term review (2024) is too high compared to the initial allocations, considering the remaining period of time until the end of the program. Moreover, large-scale projects with an implementation period of more than 2 years have added value and a higher impact.

Article 11 – Co-financing rates

RO agrees with the co-financing rates. As for para. 2, for a better understanding on the text, RO considers that the eligible actions under specific actions should be expressly provided. In para. 3, RO finds it necessary to clarify if the actions from Annex 1 can be examples of specific actions included in the Thematic Facility.

Article 12 – Programmes

Taking into consideration that this part of the instrument is intended to cover the national MS needs and the programming exercise that signifies the full picture of the external borders, which is significantly larger than what can be covered by this instrument, RO feels the need of detailing the process of consultation between COM and EBCGA (what exactly does the consultancy will cover, what is the meaning of the initial stage consultancy, if there is a period of time allocated for the consultancy mechanism, what kind of the monitoring is in place, etc.).

Para. 2, 3 and 9 - As a practical clarification, in the perspective of implementation, RO considers necessary to better indicate if the National Programmes will be transmitted by MS to the COM, which furthermore will consult the Frontex and eu-LISA Agencies or if the MS will be the ones consulting the two agencies individually. Similarly, in para 9 is necessary to point out the workflow for the cooperation and consultation process between Frontex and the COM, which should also be reflected as such by the regulations of the two agencies.

Para. 12 - Regarding the consultation of EBCGA on prior public procurement, RO notes that it is and was in the interest of MS to build systems that are integrated and compatible with existing systems and equipment as the foundation of IBM, and to comply with public procurement law in terms of transparency and free access to the tender. Given that both the current programming exercise and previous programmes have been implemented through dialogue with the COM and Frontex, existing equipment as operational support is already compatible with the EBCGA standards. In this respect, the request to comply with the EBCGA standards and the joint verification of the technical specifications may cause delays and the risk of not implementing the actions of the fund without a real risk of failing to meet EBCGA standards, while the risk of delaying the public procurement procedures would be real.

Para. 14 - RO supports the involvement of the MS in this process and proposes to replace *delegated acts* with *implementing acts* and reformulate this point: "Member States shall in particular carry out the actions listed in Annex IV. In order to address unforeseen or new situations or to ensure the effective implementation of funding, the Commission shall be empowered to adopt ~~delegated~~ **implementing** acts in accordance with Article 29 to amend Annex IV. "

Article 13 – Mid-term review

The conditionality of additional allocations of **at least 10% payments from the initially allocated amount**, in the first 3 years after the start of the implementation period will inevitably have a negative impact on the quality and efficiency of the actions undertaken to achieve the Fund's objectives. We propose removing this criterion.

At the same time, considering that, from mid-term evaluation to the end of the programming period, is a less than 5 years period, RO believes that implementing larger projects with higher impact is necessary to increase the initial amount to the detriment of the intermediate allocations.

Article 14 – Specific actions

RO considers that a list of eligible actions to be financed by Specific Actions should be included in an existing or distinct annex. In para 2 is necessary for the text to specify whether these actions must be defined from the beginning within the NP or it can be done through its subsequent amendment.

Article 15 - Operational support

RO considers that the decrease in the Operating Support Rate from 40% (as in the current Multi-Annual Financial Framework FSI) to 30% may generate the risk of not covering all existing funding eligibility requirements from Operational Support at the beginning of the implementation of MFF 2021-2027. RO proposes maintaining the current 40% financial framework.

Para 1 and 2 – in spite of the explanations given by COM during the meeting, the current Regulation no. 515/2014 does not define "*the tasks and services which constitute a public service for the Union*" but merely refers to them in recital 19² and article 10, without entering into the merits of as proper definition capable of giving proper answers in the implementation process. This is more important because a share of up to 30% of the allocated amounts could be used as operational support and it is important to know where those amounts could be targeted.

Para 3 – during the meeting, COM confirmed that the instrument certifying if Member States using operating support comply with the Union acquis on borders and visas is the Schengen Evaluation mechanism, consequently a reference to Regulation no. 1053/2013 should be included in the text. Nevertheless, such a reference would still not clarify, first of all, if the text refers to situations where *non-compliant* findings are included in the report or whether *serious deficiencies* are aimed at. Secondly, this paragraph should be developed so as to clearly stipulate what are the consequences of failing to comply with the Union acquis on borders and visas, otherwise the text lacks substance and remains a purely declarative provision.

² (19) When executing tasks at external borders and consulates in accordance with the Schengen acquis on borders and visas, Member States carry out activities in the interests of and on behalf of all other Member States in the Schengen area, thus performing a public service for the Union.

Para. 6 - RO supports the involvement of the MS in this process for which it proposes to replace *delegated acts* with *implementing acts* and to reformulate this point: "To address unforeseen or new situations or to ensure the effective implementation of funding, the Commission is empowered to adopt ~~delegated~~ **implementing** acts, in accordance with Article 29, to modify the specific tasks and services in Annex VII".

Annex VII

- a) RO proposes that eligible actions funded under operational support within the specific objective set out in Art. 3 para (2) (a) to include training costs, in the cost of personnel. Under the current ISF - Borders and Visa Regulations, these costs were considered eligible for operational support. In this respect, corroborated with the fact that in order to achieve the specific objective stipulated in art. 3 para (2) (a) the list of eligible actions should be as comprehensive as possible for all the needs identified at national level, we propose the reformulation of the text from point a) point 1, as follows:

"(1) staff costs, ***including training***;

Annex VIII

- a) Para. 3 and 5 - we propose clarifying of the term „*cooperation streams*” of the national agencies with the Eurosur National Coordination Center and eventual rewording of the whole point, due to the fact that we do not have a definition for this term and for a correct understanding of the indicator.