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WORKING PAPER

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MEETING DOCUMENT

From:	Commission Services
To:	Ad Hoc Working Party on JHA Financial instruments
Subject:	Transnational specific actions implemented through the Asylum and Migration Fund (AMF), the Internal Security Fund (ISF) and the Border Management and Visa Instrument (BMVI) of the 2021-2027 programming period (Fiche no. 6)

Delegations will find attached the above-mentioned document from the Commission.



22 March 2019

WORKING DOCUMENT OF THE COMMISSION SERVICES

Subject: Transnational specific actions implemented through the Asylum and Migration Fund (AMF), the Internal Security Fund (ISF) and the Border Management and Visa Instrument (BMVI) of the 2021-2027 programming period

In its proposals establishing the AMF, the ISF and the BMVI for the next Multiannual Financial Framework (MFF), the Commission has included the possibility to fund specific actions from the thematic facility. The work programmes of the thematic facility will establish the available amount of funding for specific actions, and identify the Union priorities that need to be addressed. Specific actions for which a Member State receives top-up funding can be either national or transnational. Transnational specific actions are carried out by entities established in a lead Member State, together with one or more partners established in other Member States.

In the framework of the Council Ad-Hoc Working Party on the JHA Financial Instruments, Member States requested additional information on how the implementation of transnational specific actions can be improved in the future. This note outlines the modalities of the implementation of transnational specific actions in the next MFF, building on the lessons learnt from the current MFF.

1. Asylum, Migration and Integration Fund (AMIF) and Internal Security Fund (ISF) 2014-2020

In the current programming period, 18 transitional specific actions have been funded through AMIF and the ISF-Borders and Visa instrument¹, following proposals put forward by Member States. The top-up funding is provided to the national programme of the lead Member State of the specific action. These transnational specific actions are currently being

AMIF transnational specific actions: EU-FRANK, National Integration Evaluation Mechanism, EURLO, EURINT, MedCOI4, ERRIN, Organisation of joint reintegration projects targeted towards unaccompanied minors, Web-based Application Tools (WAT) / ISF-B transnational specific actions: Consular cooperation in Almaty, Kazakhstan, Consular Cooperation Mechanism on Schengen Visa Processing (CCM), Schengen House in Bujumbura, Burundi, Schengen House in Kigali, Rwanda, Regional Schengen Cooperation Officers, Shared Visa Offices in Dhaka and Kuwait City, Consular Cooperation in Khartum, Sudan, Consular Cooperation in Tripoli, Libya, Schengen Office in Pristina, Kosovo and Schengen House in Ulaanbaatar, Mongolia.

implemented, with the exception of four actions in the framework of ISF-Borders and Visa instrument².

- Lessons learnt

The Commission organised two workshops on the implementation of transnational specific actions, one in 2016 and one in 2017. During these workshops, lead Member States implementing transnational specific actions identified a number of challenges and invited the Commission to facilitate an exchange of lessons learned. To this end, the Commission submitted a questionnaire and received six replies. Most of the respondents pointed to the following problems in the implementation of transnational specific actions:

- the Responsible Authority was not always the focal point for the preparation of the Member States' applications for the specific actions, including when entities in a Member State participate as a partner to a specific action of another Member State;
- different and at times clashing national (eligibility) rules of participating Member States;
- communication between the lead Member State and the partners (language issues);
- differing reporting requirements;
- audit and control by the lead Member State authorities of actions carried out by (beneficiaries in) partner Member States;
- increased workload for the Responsible Authorities associated to the management of transnational specific actions.

2. Proposed improvements in the process of implementing specific actions in the 2021-2027 programming period

Based on the lessons learnt, a number of proposed improvements to the application and follow-up processes are listed below that could facilitate the implementation of transnational specific actions.

Application process

- The calls for specific actions will be addressed to managing authorities³, through the work programme of the thematic facility.
- It is proposed that managing authorities of the lead Member State are directly involved in the preparation of an application for a specific action. The managing authority of the lead Member State should ensure that the managing authorities of the partner Member States are informed of the application.
- The application to the Commission for the specific action should be made by the managing authority of the lead Member State, through the electronic data exchange system between the Commission and Member States (Article 63(8) of the proposal for the Common Provisions Regulation).

² A number of specific actions aimed at establishing Common Application Centres could not be implemented due to the fragile security situation in the concerned third countries, either because it was decided that the action would be funded from the national budget, or because the third country where the Centre would be located will soon become a visa-free country and the subsequent decrease in workload would not justify the setting up of a Common Application Centre.

³ In the current programming period the authorities dealing with the implementation are called 'responsible authorities', while in the future MFF, it is proposed to refer to them as 'managing authorities', in line with the proposed Common Provisions Regulation.

- Arrangements between partners

The lead Member State and the partners should agree on the details of the partnership before submitting the application to the Commission by choosing one of the modalities presented below.

a) Internal agreements between partners

- Before the submission of a transnational specific action to the Commission, all entities involved should be aware of the rules governing the action. To this end, the lead Member State should sign an agreement with all partners. Such an agreement could cover the activities, including an outline of the division of tasks among participating entities, the indicative timetable, the co-financing arrangements and share of liabilities among the participating entities in the event of financial corrections (if required), the rules on eligibility of expenditure as well as the language arrangements and the reporting, monitoring, verification and audit arrangements.
- The agreement will be part of the application submitted to the Commission by the managing authority of the lead partner. The assessment of the partnership will be part of the selection criteria for the specific action.
- The Commission will ensure that the call for applications allows sufficient time to Member States to duly complete these preparatory actions.

b) Common rules on eligibility of expenditure in the call for proposals for specific actions

In some cases, the managing authorities of the lead Member State and its partners may choose to apply common rules on the eligibility of expenditure provided by the Commission in the call or in a guidance note. Once partners agree to use these rules for a specific action, the rules will apply consistently throughout the duration of the action, by all the partners.

For matters not covered by the eligibility rules, the rules agreed upon by the partners will apply; these could be, for example, the AMF/ISF/BMVI national eligibility rules of the lead Member State. The common rules on eligibility included in the call for proposals for specific actions or a guidance note could cover the following categories:

- Ineligible costs (in addition to costs listed in Article 58⁴ of the proposal for the Common Provisions Regulation and Fund-specific proposals)
- Staff
- Office and administrative cost
- Travel and accommodation
- Selected external expertise and service
- Equipment
- Infrastructure and works.

The common eligibility rules could be based on the rules applicable in direct management and/or Interreg (the EU Fund supporting interregional cooperation).

⁴ Article 58 of the proposal for the Common Provisions Regulation deals with interest on debt, the purchase of land and value added tax.

As regards the internal agreement between partners and the common rules on eligibility of expenditure set out in points a) and b) above, the partnership may consider applying the following monitoring, verifications and audit arrangements:

- The lead Member State may use **audit companies** established in other Member States to control and audit expenditure incurred by partners.
- The use of **simplified cost options** would reduce the audit and control burden as it limits the need to verify the supporting financial documents of a partner Member State.
- The lead Member State could prepare a **manual for transnational specific actions** setting out the applicable rules. Regarding the audit trail to evidence eligibility of expenditure, the manual could provide alternative ways to cater for different legal and administrative framework partners. The manual should be shared among partners in advance and partners should agree to use it. The manual should be available in the working language agreed by partners.
- If partners are established in **third countries**, it is recommended that they participate in a specific action on a non-cost basis or as subcontractors. In case a partner established in a third country incurs costs, additional safeguards should be put in place, notably:
 - by contractual provisions, the third country should allow the managing authority and the audit authority of the lead partner to carry out its functions in its territory as well as to allow the European Court of Auditors and the European Anti-Fraud Office to carry out its functions;
 - arrangements should be made for financial management including recoveries, record keeping, reporting, control and audit and processing of personal data in line with applicable EU law;
 - where the implementation of an action requires procurement of service, supply or work contracts by the partner in a third country, the following rules should be set in the partnership agreement concluded with this partner: a) where the partner is a contracting authority or a contracting entity within the meaning of the Union law applicable to public procurement procedures, it shall apply national laws, regulations and administrative provisions adopted in connection with Union laws; b) in other cases, the procurement procedures should be based on Articles 178 and 179 of Regulation 2018/1046 (the Financial Regulation) and Chapter 3 of Annex 1 (Points 36 to 41) to that Regulation should apply.

c) Allocation of a specific action to programmes of participating Member States

- The nature of the specific action permitting, the managing authorities of the lead Member State and those of partners may opt for the allocation of funding to the national programme of all participating Member States. In that case, the partnership should submit as part of the application a detailed budget indicating which costs are to be incurred by the lead partner and which by the other partners. Each allocation would be managed according to the national rules of a respective programme and reported separately, in the payment claims and annual performance reports. In addition, the lead Member State should include in the annual performance report the overall assessment of the specific action's progress, ensuring the coherence of the measure as a whole.
- Finally, the lead Member State and the partners should define their respective roles as regards the implementation of the specific action in the application to be submitted to the Commission.