



Brussels, **XXX**
[...](2018) **XXX** draft

COMMISSION DELEGATED REGULATION (EU) .../...

of XXX

supplementing Regulation (EU) No 515/2014 of the European Parliament and of the Council with regard to the definition of extra funding from the EU budget to be allocated to the implementation of the Entry Exit System

This draft has not yet been adopted or endorsed by the European Commission. Any views expressed are the preliminary views of the Commission services and may not in any circumstance be regarded as stating an official position of the Commission. The information transmitted is intended only for the Member State or entity to which it is addressed for discussion and may contain confidential and/or privileged material.

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE DELEGATED ACT

Regulation (EU) No 515/2014 of the European Parliament and of the Council¹ establishing, as part of the Internal Security Fund, the instrument for financial support for external borders and visa empowers the Commission to adopt delegated acts.

In accordance with Article 15 of Regulation (EU) No 515/2014, the purpose of this Delegated Regulation is to define the share of the amount referred to in point (b) of Article 5(5) of Regulation (EU) No 515/2014 to be allocated to the implementation of the Entry Exit System, following the adoption on 30 November 2017 of the Regulation (EU) 2017/2226 of the European Parliament and of the Council² establishing an Entry/Exit System (EES).

While detailing the type of costs to be covered by the EU budget, the EES Regulation does not define the size of extra EU funding to be allocated for that specific purpose. Consequently, such allocation, and the respective breakdown between the different beneficiaries, has to be made through a Commission delegated act, in accordance with Regulation (EU) No 515/2014, in particular point (f) of Article 5(3), point (b) of Article 5(5), second paragraph of Article 15, and Article 17.

The financial impact of this Delegated Regulation amounts to EUR 480.241.000.

This amount is calculated taking in consideration Article 64 of Regulation (EU) 2017/2226 (EES Regulation), which details the costs related to the implementation of the EES that would be borne by extra funding from the general budget of the Union, as well as previous technical studies.

An amount of EUR 287.863.000 will be allocated to cover the costs foreseen under Article 64 (1) of the EES Regulation such as the establishment and operation of the EES Central System, the Communication Infrastructure, the NUI, the web service and the data repository referred to in Article 63(2) of the EES Regulation, as well as the operations starting in 2020. Such funding shall be awarded to the agency eu-LISA which, in accordance with the EES Regulation, shall be responsible for the provision of such services.

An overall amount of EUR 192.378.000 will be awarded to the Member States participating in the EES and in the ISF – Borders and Visa Fund Regulation³, to cover the costs foreseen under Article 64(2), first subparagraph, of the EES Regulation such as those related to the integration of the existing national border infrastructure and its connection to the National Uniform Interface (NUI), as well as the costs for hosting the NUI, including its operation.

As the cost per Member State for the integration of its national border infrastructure with the EES via the NUI and subsequent operation of the NUI is very similar, independently of the size of the country, length of external borders, number of border crossing points, number of

¹ Regulation (EU) No 515/2014 of the European Parliament and of the Council of 16 April 2014 establishing, as part of the Internal Security Fund, the instrument for financial support for external borders and visa and repealing Decision No 574/2007/EC (OJ L 150, 20.05.2014, p. 143)

² Regulation (EU) 2017/2226 of the European Parliament and of the Council of 30 November 2017 establishing an Entry/Exit System (EES) to register entry and exit data and refusal of entry data of third-country nationals crossing the external borders of the Member States and determining the conditions for access to the EES for law enforcement purposes, and amending the Convention implementing the Schengen Agreement and Regulations (EC) No 767/2008 and (EU) No 1077/2011 (OJ L 327, 09.12.2017, p. 20)

³ A total of 30 States, including 26 Member States (Ireland and the United Kingdom do not participate) and the 4 Schengen Associated Countries (Iceland, Norway, Switzerland and Lichtenstein).

persons crossing the borders, etc.⁴, such amount will be allocated at equal shares to the participating Member States, resulting in a financial envelope of EUR 6.412.600 for each one of them. With such an amount the participating Member States will be able to cover the costs of integration of their existing infrastructure to the central system through their respective NUI (approximately EUR 4 million), as well as its operation 24/7 for an average of 3 years (extra amount of EUR 2.412.600). Such amount should be added to their respective National Programmes under the ISF – Borders and Visa instrument.

All the amounts mentioned above correspond to the amounts given in the Commission's Legislative Financial Statement (LFS) annexed to the COM proposal⁵ on the EES Regulation.

2. CONSULTATIONS PRIOR TO THE ADOPTION OF THE ACT

Pursuant to the Better Regulation rules and pursuant to recital 41 of Regulation (EU) 515/2014; in the application of the Regulation, including the preparation of delegated acts, the Commission should consult experts from all Member States. Such expert consultation took place on.....In accordance with the Better Regulation rules a feedback mechanism will take place after the inter-service consultation.

Given the pressing need for a quick adoption of this Commission Delegated Regulation, since part of the budgetary resources to be mobilised for its purpose are foreseen under the 2017 Budget and carried over to the 2018 EU budget, there was no time to carry out specific consultations on this Delegated Regulation.

However, the topic was extensively discussed and subject to stakeholder consultation in 2015 during the preparation of the EES Regulation. Due to the essentially technical nature of this delegated act, which simply formally defines in funding terms what was agreed in the EES Regulation, a public consultation on this Commission Delegated Regulation does seem dispensable.

3. LEGAL ELEMENTS OF THE DELEGATED ACT

Article 15 of Regulation (EU) No 515/2014 of the European Parliament and of the Council establishing, as part of the Internal Security Fund, the instrument for financial support for external borders and visa, empowers the Commission to adopt a delegated act establishing the breakdown of the amount referred to in point (b) of Article 5(5) of Regulation (EU) No 515/2014 for developing IT systems, in case the breakdown of such amount is not made in the relevant Union legislative acts.

Article 17 of Regulation (EU) No 515/2014 defines the conditions under which such delegated act can be adopted.

⁴ According to the technical studies on Smart Borders (cost analysis) made in October 2014, the costs for each Member State to integrate their existing infrastructure to the central system through their respective NUI were estimated at approximately EUR 4 million. Moreover, the legislator made it very clear in Article 64 of the EES Regulation that no extra funding would be provided for any other expenditure than that mentioned above, and so any other variable costs deriving from each MS particular needs and infrastructure are not to be covered with funds stemming from the EES Regulation.

⁵ COM(2016)194 of 6/4/2016

Article 64 of the Regulation (EU) 2017/2226 of the European Parliament and of the Council establishing an Entry/Exit System (EES), adopted on 30 November 2017, details the costs incurred with the implementation of the EES that would be supported with extra EU funding.

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COMMISSION DELEGATED REGULATION

of

supplementing Regulation (EU) No 515/2014 of the European Parliament and of the Council with regard to the definition of extra funding from the EU budget to be allocated to the implementation of the Entry Exit System

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) No 515/2014 of the European Parliament and of the Council of 16 April 2014 establishing, as part of the Internal Security Fund, the instrument for financial support for external borders and visa and repealing Decision No 574/2007/EC⁶, and in particular Article 15(2), and Article 17 thereof,

Whereas:

- (1) Article 5(3) point (f) of Regulation (EU) No 515/2014 stipulates that the implementation of a programme for setting up IT systems supporting the management of migration flows across the external borders shall occur under the conditions laid down in Article 15 of the same Regulation.
- (2) Article 5(5) point (b) of Regulation (EU) No 515/2014 allocates EUR 791 million for developing IT systems supporting the management of migration flows across the external borders, subject to the adoption of the relevant Union legislative acts.
- (3) Article 15 of Regulation (EU) No 515/2014 empowers the Commission to adopt a delegated act establishing the breakdown of the amount referred to in point (b) of Article 5(5) of Regulation (EU) No 515/2014 for developing IT systems, in case the breakdown of such amount is not made in the relevant Union legislative acts.

⁶ OJ L 150, 20.05.2014, p. 143.

- (4) Article 17 of Regulation (EU) No 515/2014 defines the conditions under which such delegated act can be adopted.
- (5) Article 64 of Regulation (EU) No 2017/2226 of the European Parliament and of the Council of 30 November 2017 establishing an Entry/Exit System (EES)⁷, which details the costs incurred with the implementation of the EES that would be supported with extra EU funding, neither determines the size of extra funding from the instrument for financial support for external borders and visa that shall be dedicated to cover those costs, nor its breakdown per type of costs.
- (6) The Entry/Exit System (EES) is a central component of the above-mentioned IT systems, and it is crucial that the implementation of the EES Regulation starts without further delay, so that the system is fully operational by 2020, as planned.
- (7) Article 64 of Regulation (EU) No 2017/2226 details the type of costs that shall be borne through additional funding from the general budget of the Union.
- (8) From the financial envelope foreseen under Article 5(5) point (b) of Regulation (EU) No 515/2014, an overall allocation of EUR 480.241.000 should be made available to cover those costs incurred in connection with the implementation of the activities to be covered through extra funding from the general budget of the Union, as foreseen in Article 64 of Regulation (EU) No 2017/2226.
- (9) Of that overall allocation, an amount of EUR 287.863.000 should be made available to cover the costs related to the establishment and operation of the EES Central System, the Communication Infrastructure, the National Uniform Interface (NUI), the web service and the data repository referred to in Article 63(2), as well as the operations starting in 2020, as foreseen in Article 64(1) of Regulation (EU) No 2017/2226.
- (10) According to Article 37 of Regulation (EU) No 2017/2226, eu-LISA shall be responsible for the development and operational management of the EES, being responsible for the development of the EES Central System, the NUIs, the Communication Infrastructure and the Secure Communication Channel between the EES Central System and the VIS Central System, as well as the development of the web service and the data repository.
- (11) Of that overall allocation, an amount of EUR 192.378.000 should be made available to cover the costs incurred in connection with the integration of the existing national border infrastructure and its connection to the NUI, as well as in connection with hosting the NUI, as foreseen in Article 64(2) of Regulation (EU) No 2017/2226.
- (12) According to Article 38 of Regulation (EU) No 2017/2226, each Member State shall be responsible for the integration of the existing national border infrastructure and its connection to the NUI, as well as hosting the NUI.
- (13) Given that Regulation (EU) 2017/2226 builds upon the Schengen acquis, Denmark, in accordance with Article 4 of Protocol (No 22) on the position of Denmark, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, decided to implement Regulation (EU) 2017/2226 in its national law. Denmark is therefore bound under international law.

⁷ Regulation (EU) No 2017/2226 of the European Parliament and of the Council of 30 November 2017 establishing an Entry/Exit System (EES) to register entry and exit data and refusal of entry data of third-country nationals crossing the external borders of the Member States and determining the conditions for access to the EES for law enforcement purposes, and amending the Convention implementing the Schengen Agreement and Regulations (EC) No 767/2008 and (EU) No 1077/2011 (OJ L 327, 09.12.2017, p. 20).

- (14) This Regulation constitutes a development of provisions of the Schengen *acquis* in which the United Kingdom does not take part, in accordance with Council Decision 2000/365/EC⁸; the United Kingdom is therefore not taking part in the adoption of this Regulation and is not bound by it or subject to its application. This Regulation should therefore not be addressed to the United Kingdom.
- (15) This Regulation constitutes a development of provisions of the Schengen *acquis* in which Ireland does not take part, in accordance with Council Decision 2002/192/EC⁹; Ireland is therefore not taking part in the adoption of this Regulation and is not bound by it or subject to its application. This Regulation should therefore not be addressed to Ireland.
- (16) As regards Iceland and Norway, this Regulation constitutes a development of the Schengen *acquis* within the meaning of the Agreement concluded by the Council of the European Union and the Republic of Iceland and the Kingdom of Norway concerning the latter's association with the implementation, application and development of the Schengen *acquis* (1) which falls within the areas referred to in Article 1, Points A and B of Council Decision 1999/437/EC (2).
- (17) As regards Switzerland, this Regulation constitutes a development of provisions of the Schengen *acquis* within the meaning of the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis* (3) which fall within the area referred to in Article 1, Points A and B of Decision 1999/437/EC read in conjunction with Article 3 of Council Decision 2008/146/EC (4).
- (18) As regards Liechtenstein, this Regulation constitutes a development of the provisions of the Schengen *acquis* within the meaning of the Protocol between the European Union, the European Community, the Swiss Confederation and the Principality of Liechtenstein on the accession of the Principality of Liechtenstein to the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis* (5) which fall within the area referred to in Article 1, Points A and B of Decision 1999/437/EC read in conjunction with Article 3 of Council Decision 2011/350/EU (6).
- (19) In order to allow for the prompt application of the measures provided for in this Regulation, the Regulation should enter into force on the day following that of its publication in the *Official Journal of the European Union*.
- (20) The measures provided for in this Regulation are in accordance with the opinion expressed by experts from all Member States consulted specifically for that purpose.
- (21) Regulation (EU) No 515/2014 should therefore be supplemented accordingly.

HAS ADOPTED THIS REGULATION:

⁸ Council Decision 2000/365/EC of 29 May 2000 concerning the request of the United Kingdom of Great Britain and Northern Ireland to take part in some of the provisions of the Schengen *acquis* (OJ L 131, 1.6.2000, p. 43).

⁹ Council Decision 2002/192/EC of 28 February 2002 concerning Ireland's request to take part in some of the provisions of the Schengen *acquis* (OJ L 64, 7.3.2002, p. 20).

Article 1

1. A total amount of EUR 480.241.000 shall be allocated from the general budget of the Union to cover the costs of implementation of Regulation (EU) No 2017/2226, as foreseen in Article 64 thereof.

2. This amount shall be taken from the amount of EUR 791.000.000 earmarked for the development of IT systems under Article 5(5) point (b) of Regulation (EU) No 515/2014.

Article 2

Of the amount referred to in Article 1(1), EUR 287.863.000 shall be allocated to eu.LISA to cover the costs referred to in Article 64(1) of Regulation (EU) No 2017/2226 related to the establishment and operation of the EES Central System, of the Communication Infrastructure, of the National Uniform Interface (NUI), of the web service and of the data repository .

Article 3

1. Of the amount referred to in Article 1(1) EUR, 192.378.000 shall be allocated to cover the costs incurred in connection with the integration of the existing national border infrastructure and its connection to the NUI, as well as in connection with hosting the NUI, including its operation, as foreseen in Article 64(2) of Regulation (EU) No 2017/2226.

2. Such allocation shall be awarded, in equal shares to the Member States participating in the EES and in the ISF – Borders and Visa Fund Regulation, resulting in a financial envelope of EUR 6.412.600 for each of them.

Article 4

This Regulation shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaties.

Done at Brussels,

For the Commission

The President

[...]

On behalf of the President

[...]

[Position]