



Brussels, 13.7.2018
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COMMISSION DELEGATED REGULATION (EU) .../...

of 13.7.2018

**supplementing Regulation (EU) No 515/2014 with regard to the allocation of extra
funding from the EU budget to the implementation of the Entry Exit System**

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE DELEGATED ACT

Article 15 of 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 System (as referred to as “EES”), following the adoption on 30 November 2017 of the Regulation (EU) No 2017/2226 of the European Parliament and of the Council²

While specifying the type of costs to be covered by extra funding from the EU budget, Regulation (EU) No 2017/2226 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), Article 15 and Article 17.

This Delegated Regulation sets out an amount of EUR 480 241 000 to cover the costs of implementation of Regulation (EU) 2017/2226. Since this amount is mobilised from the financial envelope of EUR 791 million foreseen under point (b) of Article 5(5) of Regulation (EU) No 515/2014, and has already been budgeted in the EU 2017 and 2018 budgets, and foreseen in the 2019 and 2020 budgets, this Delegated Regulation has no additional financial impact.

The amount of EUR 480 241 000 is calculated taking in consideration Article 64 of Regulation (EU) No 2017/2226, which specifies 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 the European Agency for the operational management of large scale information systems in the area of freedom, security and justice established by Regulation (EU) No 1077/2011 (as referred to as “eu-LISA”) to cover the costs foreseen under Article 64(1) of Regulation (EU) No 2017/2226, i.e. 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. In accordance with Regulation (EU) No 2017/2226, eu-LISA is responsible for the provision of such services.

An overall amount of EUR 192 378 000 will be allocated to the Member States implementing the EES, to cover the costs foreseen under Article 64(2), first subparagraph, of Regulation (EU) No 2017/2226, i.e. the costs related to the integration of the existing national border infrastructure and its connection to the National Uniform Interface (NUI), as well as the costs

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).

for hosting the NUI. This overall amount will also cover the costs of establishment and operation of the NUI referred to in Article 64(1) of Regulation (EU) No 2017/226 as these costs are incurred by both eu-LISA and the Member States.

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 persons crossing the borders, etc³, such amount will be allocated at equal shares to the participating Member States. With such an amount the participating Member States will be able to cover the costs of integration of their existing national border 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 proposal⁴ on Regulation (EU) No 2017/226.

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, the Commission should consult experts from all Member States when preparing delegated acts.

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 organize an expert group meeting on this Delegated Regulation. However, Member States were consulted and given the opportunity to comment the draft Delegated Regulation in writing between 17 May and 5 June. Following the comments provided by the Member States, a revised draft was circulated to the Member States.

In addition, the topic was extensively discussed and subject to stakeholder consultation in 2015 during the preparation of the EES Regulation.

Finally, due to the nature of this delegated act, which simply translates into funding terms the measures set out in the EES Regulation, the Commission considered that there was no added value in publishing the draft Delegated Regulation for feedback mechanism.

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

³ 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.

⁴ COM(2016)194 of 6.4.2016.

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.

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 the general budget of the Union.

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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/EC⁵, and in particular the second subparagraph of Article 15 thereof,

Whereas:

- (1) Article 5(5)(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.
- (2) 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 Article 5(5) (b) of Regulation (EU) No 515/2014 for developing IT systems, in the case where the breakdown of such amount is not made in the relevant Union legislative acts.
- (3) Regulation (EU) 2017/2226 of the European Parliament and of the Council⁶ establishes the Entry/Exit System (EES). The EES is a central component of the IT systems referred to in recitals (1) and (2). In addition, it is crucial that the implementation of Regulation (EU) 2017/2226 starts without further delay, so that the system is fully operational by 2020, as planned.
- (4) Article 64 of Regulation (EU) 2017/2226 specifies the costs incurred in connection with the implementation of the EES that would be borne by the general budget of the Union thereby supporting these costs at a 100% rate. However, that provision determines neither the size of extra funding that will be dedicated to cover those costs, nor its breakdown per type of costs and beneficiaries.
- (5) From the financial envelope provided for in Article 5(5)(b) of Regulation (EU) No 515/2014, an overall allocation of EUR 480 241 000 should be made available to cover the costs linked to the application of Article 64(1) and (2) of Regulation (EU) 2017/2226.

⁵ OJ L 150, 20.5.2014, p. 143.

⁶ 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).

- (6) Of that overall allocation, an amount of EUR 287 863 000 should be made available to the European Agency for the operational management of large scale information systems in the area of freedom, security and justice ('eu-LISA') to cover in accordance with Article 37 of Regulation (EU) 2017/2226, 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) of Regulation (EU) 2017/2226, as provided in Article 64(1) of that Regulation.
- (7) Of that overall allocation, an amount of EUR 192 378 000 should be made available to the Member States 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 provided for in Article 64(2) of Regulation (EU) 2017/2226. In addition, that amount should cover the costs linked to the establishment and operation of the NUI as referred to in Article 64(1) of Regulation (EU) 2017/2226, as those costs are incurred both by eu-LISA and the Member States.
- (8) In accordance with the second subparagraph of Article 64(2) of Regulation (EU) 2017/2226, the amount of EUR 192 378 000 cannot be used to support the costs listed in that subparagraph. However those costs would be eligible for funding under the national programmes in the Internal Security Fund established by Regulation (EU) 515/2014 at the co-financing rate referred to in Article 16(3), (4) and (5) of Regulation (EU) 514/2014.
- (9) 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.
- (10) 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/EC⁷; 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.
- (11) 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/EC⁸; 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.
- (12) 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

⁷ 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).

⁸ 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).

development of the Schengen *acquis*⁹ which falls within the areas referred to in Article 1, Points A and B of Council Decision 1999/437/EC¹⁰.

- (13) 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*¹¹ 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/EC¹².
- (14) 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*¹³ 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/EU¹⁴.
- (15) 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*.
- (16) 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.
- (17) Regulation (EU) No 515/2014 should therefore be supplemented accordingly,

HAS ADOPTED THIS REGULATION:

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) 2017/2226 in accordance with Article 64 of that Regulation.

⁹ OJ L 176, 10.7.1999, p. 36.

¹⁰ Council Decision 1999/437/EC of 17 May 1999 on certain arrangements for the application of the Agreement concluded by the Council of the European Union and the Republic of Iceland and the Kingdom of Norway concerning the association of those two States with the implementation, application and development of the Schengen *acquis* (OJ L 176, 10.7.1999, p. 31).

¹¹ OJ L 53, 27.2.2008, p. 52.

¹² Council Decision 2008/146/EC of 28 January 2008 on the conclusion, on behalf of the European Community, 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* (OJ L 53, 27.2.2008, p. 1).

¹³ OJ L 160, 18.6.2011, p. 21.

¹⁴ Council Decision 2011/350/EU of 7 March 2011 on the conclusion, on behalf of the European Union, 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*, relating to the abolition of checks at internal borders and movement of persons (OJ L 160, 18.6.2011, p. 19).

2. The amount referred to in paragraph 1 shall be taken from the amount of EUR 791 000 000 earmarked for the development of IT systems referred to in Article 5(5)(b) of Regulation (EU) No 515/2014.

Article 2

The amount referred to in Article 1(1) shall be used as follows:

- (a) EUR 287 863 000 shall be allocated to the European Agency for the operational management of large scale information systems in the area of freedom, security and justice established by Regulation (EU) No 1077/2011 to cover the costs referred to in Article 64(1) of Regulation (EU) 2017/2226.
- (b) EUR 192 378 000 shall be allocated to the Member States to cover the costs referred to in Article 64(2) of Regulation (EU) 2017/2226 as well as the costs incurred in connection with the establishment and operation of the National Uniform Interface as referred to in Article 64(1) of Regulation (EU) 2017/2226. In accordance with Article 64(1) and (2) of Regulation (EU) 2017/2226, the contribution from the Union budget to the costs incurred shall amount to 100% of the total eligible expenditure. Such contribution shall be allocated in equal shares to the Member States.

Article 3

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, 13.7.2018

For the Commission
The President
Jean-Claude JUNCKER