EUROPEAN COMMISSION
DIRECTORATE-GENERAL HOME AFFAIRS

Directorate D – Strategy and Delivery Steering
Unit D3 – MFF Programming

Brussels, 27 November 2014

Subject: **Observations on the proposed multiannual national programme under the Internal Security Fund for Spain**

Dear ███████████████,

Thank you for the proposed national programme under the Internal Security Fund for Spain formally submitted on 3 October 2014.

In accordance with Article 14(6) of Regulation (EU) No 514/2014 of the European Parliament and of the Council (Horizontal Regulation) *"The Commission shall make observations within three months of the date of submission of the proposed national programme. Where the Commission considers that a proposed national programme is inconsistent with the objectives of the Specific Regulation, in the light of the national strategy, or that the Union funding to be allocated to those objectives is insufficient or that the programme does not comply with Union law, it shall invite the Member State concerned to provide all necessary additional information and, where appropriate, to modify the proposed national programme."*

Following the examination by the Commission, we would like to provide you with our observations at this stage of the process and invite you to present us with an amended version of the programme within one month from the reception of this letter.

In general, the proposed programme has been prepared against the background set up in the applicable legal framework. Nevertheless, we would like to draw your attention to the observations provided for each section and kindly ask you to modify the programme in this respect.

We would like to assure you that we stand ready to assist you in drafting the national programme and speed up the approval process.

The period of six months set for the approval of the multiannual national programme by the Commission referred to in Article 14(7) of Regulation (EU) No 514/2014 is hereby suspended until an amended version of the programme is provided.

Yours sincerely,

Head of Unit

Encl.: Annex - Observations on the proposed national programme

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ANNEX
Observations on the proposed national programme

General

We would like to draw your attention to the fact that the Spanish version of the draft national programme for ISF formally submitted in SFC2014 and its English translation uploaded by Spain in SFC2014 a few days later are different: the text in English contains information that is not provided in the Spanish version (for instance the expected results for NO1 under Visas and the annex on operating support are provided in the English version but not in the official one). This obviously creates some difficulties in assessing the programme. We would therefore invite Spain to ensure that, if a translation of the national programme into English is uploaded, that it is indeed a trustworthy translation of the same document that was formally sent.

Identification of the designated authorities:

1.   We take note that, although the formal designation process of the Responsible Authority has not been finalised yet, the Responsible Authority (RA) and the Audit Authority (AA) will in principle be the same as for the former SOLID Funds. We take also note that no Delegated Authority is foreseen. We would invite Spain to conclude the formal designation process as soon as possible and, once the RA has been formally designated, to provide the documents foreseen in article 2 of Commission Delegated Regulation n°1042/2014.

2.   We also note that no summary description of the Management and Control System (MCS) is provided, thus preventing our services from assessing such system in particular as regards its relevance in the light of the actions envisaged. We therefore invite Spain to provide such a description in the amended version of the programme.

Section 1: Executive summary

3.   The structure and content of this section could be significantly improved. This being an executive summary, the usefulness of a section "summary" in it seems questionable. The text under the section 'strategy' consists not really in the presentation of Spain's strategy in this area but rather in a list of actions to be implemented which are then repeated, in a slightly reformulated manner, in the following sections 'Objectives' and 'Results'. Instead of listing activities/actions, Spain could consider providing an easily readable more political summary of the programme, including information on relevant national strategies and their main pillars.

4.   The terminology used should also be as clear as possible. Two examples: Spain should avoid using the notion of "biometric visas" and later on "biometric VIS", referring instead just to VIS; also, although the Smart Borders measures will indeed enhance the "traveller flow controls", we would strongly suggest that Spain refers expressly to RTP/ EES systems, instead of presenting them as "absence of control for legal travellers... and reinforcement for illegal travellers" respectively.

5.   No mention is made of "drug trafficking", which was one of the key areas identified in the Policy Dialogue. Also, issues related to the common visa policy should be better explained (draft only mentions ABC gates and VIS/SIS).

Section 2: Baseline situation in the Member State

6.   The presentation of the baseline situation should be improved, in particular as regards SIS II, organised crime or critical infrastructure.

7.   Some information on past measures could be more detailed. No information is given on past EU funding: it is necessary to provide this information, including also an indication of which of the described available means for border control have been financed with EU funding. To better understand Spain's needs and the weight of EU funding, it would also be important to have an idea of the annual resources from the national budget dedicated to each priority (broken down per priority).

8.   Needs assessment regarding visas could be a bit more detailed by providing examples. Although the section on borders is relatively well developed, when indicating the number of available equipment it should also be explained if such equipment is sufficient to address Spain's needs in the area of border control, if there are any shortages and, if so, which ones, etc. To better illustrate the increased migratory pressure, it would also be useful to add the 2013 statistics on the number of interceptions, while keeping the information provided for the period 2007-2013. Spain is also invited to explain how the latest recommendations from the Schengen evaluations have been addressed and, if there are any outstanding ones, how it plans to address them.

9.   As mentioned above, the terminology used should be as accurate as possible: in the last paragraph of the Visas section reference should be made to VIS, instead of SIS II: text should also just refer to VIS, instead of "VIS Biometric" or "Biometric VIS".

Section 3: Programme objectives

SO1 – Support the Common Visa Policy

10.   This section should be improved by providing a good explanation linking the needs to the objectives, as per the national strategies, as well as to the planned activities. It should be a bit more descriptive and more political, instead of essentially listing the funding priorities. Also, the first two paragraphs from the NO1 section should be moved up to the SO1 section, as they concern not only "national capacity" but also other areas.

11.   Some of the priorities are not clearly presented: this is for instance the case of the IT / VIS / SIS related priorities. The draft makes reference to "Integration of SIS-II listings: the list of excludable foreign nationals (returned, expelled, banned from entry)": as this is not possible and not even envisaged for the moment we would appreciate if Spain could further elaborate on such proposal.

12.   As regards National Objective 1 (National Capacity), we would like to note the following:

a)   As noted above, an effort should be made to ensure that the terminology used is as accurate and clear as possible. For instance: Spain mentions SIVICO-II, without explaining what it is; it refers to VISMAIL and VISION as "subsystems", while they are rather communication systems/mechanisms/networks; it refers to an ADVANCE VIS subsystem which is unknown to our services; it refers to the incorporation of the biometric visa on a chip, while there will be no Schengen visas with chips. The use of such inaccurate language prevents our services from having a clear idea of Spain's priorities in this area and therefore assess its draft national programme.

b)   As EU funding should address Spain's needs in terms of Schengen visa processing (and not finance other consular activities, passport issuing, D-visas, etc.), Spain should specify the consulates processing Schengen visas that will be specifically targeted by EU funding.

c)   The measures concerning consular cooperation should be moved to the section on NO3.

13.   On the National Objective 2 (Union *Acquis*), we would suggest that, as regards training of border guards, Spain spells out clearly that their training concerns the use of VIS and Schengen visa issuing in general. Moreover, further information could be provided as regards

activities such as the purchase of 175 videoconferencing units, whose justification seems doubtful.

14.   As regards the National Objective 3 (Consular Cooperation), and as noted above, the measures concerning consular cooperation presented under NO1 should be moved to the NO3 section.

SO2 – Borders

15.   The draft presents the national strategy on border control in a very general manner. Taking into account the migratory pressure which Spain is faced with, Spain should include a more developed and targeted strategy. In addition, the text seems exclusively focused on the fight against irregular migration. An important effort should be made to revise the narrative and strive for a better balance with an emphasis also on the facilitation of smooth and safe crossing of the borders by legitimate and "bona fidae" travellers as one of the objectives of the strategy, including at airports.

16.   In general, for all the NOs, it is not very clear which of the proposed actions are funding priorities.

17.   As regards National Objective 1 (Eurosur), it would be useful if Spain could provide some examples of actions (e.g. on means for border surveillance), as well as information on how the new purchases would relate to already available capacities (in relation also with the request to provide information in the baseline situation on past EU funding in this area and remaining needs). Information provided in the baseline situation also suggests that the first expected result (1 National Coordination Centre and 3 Regional Coordination Centres) are already in place: it would be useful to have clarifications on this point. We would also like to note that the upgrading of equipment could be covered as Operating Support.

18.   As regards National Objective 2 (Information exchange), it would be useful to know how (with what kind of activities) Spain plans to increase communication with other EU MS, third countries and EU agencies for border management, if possible providing examples. We would also like to note that NO2 aims essentially at improving interagency cooperation (cf. manual on programming); therefore, you might consider moving some of the actions proposed in this section to NO3. As regards the interconnection of databases, it would be important to know which/what kind of databases are meant.

19.   As regards National Objective 3 (Common Union Standards), please note that actions on cross-border crime in general do not entirely fall within the scope of the ISF-Borders Regulation: this regulation supports only those cross-border crime related issues which are directly linked to the movement of persons. Please also note that measures related to return should be included under the AMIF. In addition, training activities (e.g. specialised training of border officials) should rather be included in NO4, while projects related to development of Smart Borders should be moved to NO6.

20.   As regards National Objective 4 (Union *Acquis*), it would be useful to have more information on how Spain intends to increase its capacity for correct and uniform application of the Union *acquis*.

21.   As regards National Objective 5 (Future Challenges), Spain is invited to provide – in a separate document, not forming part of the programme – more information about its plans to establish a National Border Control Crisis Centre and the three Regional Border Control Crisis Centres.

22.   As regards National Objective 6 (National Capacity), we would like to make the following comments:

a)   The draft mentions infrastructures at border crossing points (BCP), especially in Ceuta and Melilla; please, describe what type of infrastructure you plan to fund through the programme and provide examples;

b)   Please, note that measures related to Passenger Name Record (PNR) are out of the scope of the ISF-Borders: the possibilities offered by ISF-Police in this area should be explored;

c)   It would be useful to indicate in which BCPs and how many ABC gates you plan to install during the programming period;

d)   Please, explain how the measures related to SIVE are different from those described under NO1 (Eurosur), as the descriptions seem quite similar. Although the measures look quite relevant, for the coherence of the programme as well as to avoid fragmentation and/or overlapping, it is preferable to place such actions under a single NO;

e)   The "extension of the ABC systems" has already been mentioned under NO3. Please, clarify if there is any difference between both actions: if not, we believe that such action should be referred only once (under NO3);

f)   It is not clear what are AVANCE and SOA applications; please clarify.

23.   Specific Action 2: Frontex Equipment - Please note that, as the pledging exercise for Specific Actions takes place separately from the assessment of the draft ISF National Programme, no information should be inserted in this section until the top-up funding has been allocated to Member States. However, as we noted that Spain includes under specific actions many items that most likely are necessary at its own borders (e.g. dog teams), we invite Spain to clarify whether its strategy would foresee equipping the national authorities with those kinds of tools/means independently of any possible awarding of specific actions.

SO3 – Operating Support

24.   Please note that the annex on Operating Support has been attached only to the English version, not to the version formally submitted. We also note that its contents do not correspond to the description of the actions in the text. Moreover, the amounts in the annex do not correspond to those given in the financing plan.

25.   As regards more specifically operating support for visas, the amount of EUR 3,7M (or EUR 10M as mentioned in the annex) is an important allocation and therefore more clarifications are needed as regards the planned actions: besides, there is an overlap between the list under 3.3.2 and that presented under 3.1.1 (NO1). Since VIS and SIS II are two different systems, the planned actions should be revised. In addition, the cost of training should be counted under NO2. On the other hand, the actions under 3.3.2 and the ones mentioned in the annex do not correspond at all (as well as the allocated amount under 7.1.1 and in the annex). We invite Spain to revise these sections and provide the necessary clarifications.

26.   As regards more specifically operating support for borders, and as noted already above, measures related to PNR are out of the scope of the ISF-Borders. Also, we would like to note that the Smart Borders measures consist only of EES and RTP systems: we would like to invite you to reformulate the text accordingly.

27.   Due to the increased migratory pressure at its borders, and considering that the needs in this area are not likely to decrease in the coming years, the Spanish authorities are invited to re-consider the level of funding to be allocated to operating support under the national programme.

SO4 – Preventing and combating crime

28.   The draft presents no clear strategy in this area. The document just mentions a series of objectives and actions grouped in three sectors (Drug Trafficking & Policy Cycle, Anti-Radicalisation and Cybercrime) without providing the global approach: no reference is made to important issues that have been discussed during the Policy Dialogue such as trafficking in human beings, anti-corruption and trafficking in arms, although they are mentioned later on under the NOs.

29.   The NOs could be better explained: in several cases the draft just provides a list of actions and expected results, with no presentation of general context and objectives.

30.   As regards National Objective 1 (C-Prevention and Combating), in the area of radicalisation Spain is invited to consider funding so called "exit programmes", which help individuals to leave terrorist groups ("disengagement") and reject violence ("de-radicalisation").

31.   As regards National Objective 2 (C-Exchange of Information), we believe that the police information system ("Sistema de Información Policial (SIP)") that Spain proposes to set up should be based on the UMF (universal message format) standard developed by Europol. Spain is also invited to provide more information on the action "Facilitar el intercambio de información para definir estrategias..." and to consider involving Europol in a systematic way in its system of "Secure information exchange with "Plataforma Bogotá". As regards prevention of radicalisation, Spain could consider creating forums/platforms for practitioners (not only police officers, but prison and probation staff, health and social workers, etc.) to exchange experiences, knowledge, best practices, etc.

32.   As regards National Objective 3 (C-Training), further details in terms of police training would be helpful. There is clear reference to CEPOL and the Law Enforcement Training System (LETS), which is appreciated. Although some actions (which are only enumerated – without any level of detail) do fall within the scope of LETS Strands 1 and 2, a number of them concern specialised trainings (*prevention of radicalisation – specialised trainings in criminal methods and multidisciplinary training of EU and third countries police officers*) for which it would be better to rely on CEPOL. Given the lack of details, and the fact that objectives and financial priorities are only listed (enumeration), intentions are not always clear. We would also welcome the inclusion under this NO of training in the prevention of radicalisation: first-line practitioners (apart from police officers, also prison and probation staff, health and social workers, etc.) should also be trained in how to prevent, recognise and tackle radicalisation. Finally, it is worth noting also that LETS may be non-implementable before 2016.

SO6 – Risks and crisis

33.   The strategy on this SO is presented in a too general manner. As noted above, the baseline situation in this area is especially poorly presented, which hinders the comprehensive analysis of the proposed examples of actions under the NOs.

34.   As regards National Objective 1 (R-Prevention and Combating), the Commission welcomes the inclusion of SCEPYLT as a priority, but notes that it is only planned to start in 2015: we believe that the programme should foresee its funding/implementation already from 2014. Other actions seem relevant, but they are all presented very vaguely: more details are needed.

35.   As regards National Objective 2 (R-Exchange of Information), we would appreciate to have further details on the action "*Determination of the European strategic sectors with critical infrastructures*". More details will also be necessary as regards the action "*Major cyber security and resilience of communication networks between public and private sectors in terms of their critical infrastructures*". We would appreciate to receive more information also on the CBRN-E

action "*Increase the capacity of anticipation and coordinated response at European level against deliberate attacks, especially with CBRN-E agents and against terrorist threats or violent extremists.*"

36.   As regards National Objective 3 (R-Training), the targets seem to be sufficiently clear. We would however appreciate to receive more information on the action "*Seminars and training courses in the field of critical infrastructure protection, bombings, CBRN threats and cyber-security, for officials from the EU and third countries with which there is close cooperation*", namely to know which third countries are envisaged in each of the above-mentioned areas.

37.   As regards National Objective 7 (R-threat and risk assessment), it would be useful to have further information on the action concerning the "*development of a map of vulnerable elements of the critical infrastructures...*" , namely to know if it concerns critical infrastructures only in Spain or also in the rest of Europe.

Section 3: Indicative timetable

38.   The indicative timetable is very detailed, but the actions listed are not totally consistent with the draft, as some actions have been put under different NOs. To be noted again that LETS may be non-implementable before 2016.

Section 5: Common Indicators and Programme Specific Indicators

39.   As regards SO Visas, the common indicators given do not seem to be supported by any explanation in the national programme. An amount of approximately EUR 250.000 is foreseen to support six consular cooperation activities: this might be insufficient.

40.   As regards SO Borders, indicator 2.3.1 seems very low (number of border crossings of the external borders through ABC gates) and indicator 2.3.2 should be filled, as it is related to indicator 2.3.1.

41.   As regards SO Crime, some figures look too low: e.g. duration of training (person days) and should be double-checked.

Section 6: Framework for preparation and implementation of the programme by the Member State

42.   Draft mentions the setting up of a monitoring committee and explains very briefly its tasks but does not give its composition.

43.   As regards the Common Monitoring and Evaluation Framework, we would like to stress the importance of establishing a strong framework ensuring proper monitoring, follow-up and adequate procedures for project allocations.

44.   On the involvement of relevant partners, we would also note that, as regards police trainings, especially if related to LETS Areas 3 and 4, consultation with CEPOL would be necessary.

45.   More details are necessary as regards coordination with EU Funds.

46.   Section 6.4 should be filled.

47.   Section 6.7.2 has also not been filled, while it seems that some government bodies mentioned under section 6.7.1 might be receiving direct award. Please note the difference between direct award (the RA acts as awarding body, awarding grants directly such as in the case of de jure or de facto monopolies, in which case neither the RA nor the DA can be

beneficiaries) and executing mode (the RA is the beneficiary, implementing projects directly, either alone or in association with any other national authority, because of administrative powers, technical expertise, or in cases such as a de jure monopoly or security requirements). For more information please refer to Articles 7 and 8 of Commission Delegated Regulation (EU) No 1042/2014 of 25 July 2014.

Section 7: The financing plan of the programme

48.   Please note that the minimum percentage for National Capacity is not respected and no explanation is given.

49.   As regards more specifically SO1 (Visas), the amount proposed, which is considerable, cannot be adequately assessed for the moment by our services, pending the provision by Spain of further details on many of the actions (*please see comments above*).

50.   As regards more specifically SO2 (Borders), taking into account the significant national allocation which Spain receives, we would appreciate if Spain could provide a breakdown of costs within each NO - if necessary, in a separate document not forming part of the programme itself. We note also that Spain included in its financing plan the amount requested for FRONTEX equipment: we would suggest that Spain revise its financing plan, as the project proposals for Specific Actions are currently being analysed and a final decision has not been taken yet.