

### **On possible EU financing of infrastructures at EU external borders**

As indicated, in the margins, during the last European Council meeting, it would be legally possible, under the existing EU *acquis* on funding for border areas, for the EU to contribute to finance the building of fences at the EU external borders.

In Regulation 2021/1148 which is part of the Integrated Border Management Fund<sup>1</sup>, Annex III, point 1(a), entitled "scope of support", provides that:

*"1. Within the specific objective set out in point (a) of Article 3(2), the Instrument shall in particular support the following:*

*(a) infrastructure, buildings, systems and services required at border crossing points and for border surveillance between border crossing points."* (emphasis added).

The specific objective referred to in point (a) of Article 3(2) provides that:

*"(a) supporting effective European integrated border management at the external borders, implemented by [Frontex] as a shared responsibility of [Frontex] and the national authorities responsible for border management, to facilitate legitimate border crossings, to prevent and detect illegal immigration and cross-border crime and to effectively manage migratory flows;"* (emphasis added).

An important element is of course to ensure that the external border in question, particularly when it will have benefited from EU financing, is managed in accordance with EU law and the possible conditions which will accompany such financing.

Respecting EU law means, for instance, that the fence should not run all along the external border without any border crossing points (even though a border crossing point may be temporarily closed in cases of urgency or specific threat). Conditions put may for instance be that the fence should be efficient but in compliance with the Charter (i.e. not use material that makes it dangerous for people, electricity, razor blades, etc.). Conditions may also be that the area should remain accessible for Frontex or other EU bodies, etc.

It is recalled that Article 13(1), on border surveillance, of the Schengen Borders Code reads as follows:

*"1. The main purpose of border surveillance shall be to prevent unauthorised border crossings, to counter cross-border criminality and to take measures against persons who have crossed the border illegally. A person who has crossed a border illegally and who has no right to stay on the territory of the Member State concerned shall be apprehended and made subject to procedures respecting Directive 2008/115/EC. [ie the Return Directive]"*

Therefore, financing with EU funds the building and/or maintenance of fences at EU external borders in accordance with the relevant EU funding instrument is legally possible.

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<sup>1</sup> Regulation (EU) 2021/1148 of the European Parliament and of the Council of 7 July 2021 establishing, as part of the Integrated Border Management Fund, the Instrument for Financial Support for Border Management and Visa Policy (OJ L 251, 15.7.2021, p. 48).