



Council of the
European Union

Brussels, 13 December 2019
(OR. en)

14616/19

LIMITE

JAI 1266
FRONT 336
ASIM 147
MIGR 201
CODEC 1699
CADREFIN 415

Interinstitutional File:
2018/0248(COD)

'I' ITEM NOTE

From:	Presidency
To:	Permanent Representatives Committee
Subject:	Proposal for a Regulation of the European Parliament and of the Council establishing the Asylum and Migration Fund - Progress report

I. INTRODUCTION

1. On 13 June 2018, the Commission put forward a proposal for a Regulation of the European Parliament and of the Council establishing the Asylum and Migration Fund¹ (hereinafter referred to as 'AMF' or 'the Fund') under Heading 4 (Migration and Border Management) of the Multiannual Financial Framework (MFF) 2021-2027.
2. The objective of the AMF is to contribute to an efficient management of migration flows in line with the relevant Union *acquis*. More concretely, the AMF will contribute to:
(i) strengthen and develop all aspects of the Common European Asylum System, including its external dimension; (ii) support legal migration to the Member States and to contribute to the integration of third-country nationals; and (iii) contribute to countering irregular migration and ensuring effectiveness of return and readmission in third countries.

¹ 10153/18 + ADD 1

3. The European Parliament adopted its first-reading position² at the plenary session of 13 March 2019.
4. On 7 June 2019, the Council reached a partial general approach³ on the abovementioned proposal, which also served as the mandate for negotiations with the European Parliament in the context of the ordinary legislative procedure.

II. ANNEX I - Criteria for the allocation of funding to the programmes under shared management

5. Annex I on the criteria for the allocation of funding to the programmes under shared management was kept between square brackets in the partial general approach, pending the conclusion of negotiations on the MFF 2021-2027.
6. On 9 July 2019, the Presidency informed the Ad hoc Working Party on the MFF of its intention to continue discussions at sectoral level on the allocation criteria of the Home Affairs instruments (Asylum and Migration Fund, Internal Security Fund and border management and visa instrument).
7. The Ad hoc Working Party on JHA Financial Instruments discussed Annex I at its meeting on 18 September 2019. On the basis of the comments by delegations raised at this meeting and received in writing thereafter, the Presidency prepared a compromise proposal⁴ which was examined by the Ad hoc Working Party on JHA financial instruments on 9 October 2019.
8. The discussion continued at the level of JHA Counsellors (financial instruments) on 24 October and 15 November 2019. As not enough support was secured, the Presidency proposed a revised compromise proposal⁵ on Annex I on the basis of comments raised by delegations at these two meetings and received in writing thereafter.

² 7404/19
³ 10148/19
⁴ 12658/19
⁵ 14415/19

9. The discussion continued at the level of JHA Counsellors (Financial instruments) on 22 November 2019. At this meeting, the revised Presidency compromise proposal secured the necessary support. The compromise text includes a number of amendments to the original Commission proposal on Annex I, notably on the following matters:
- the fixed amount to be allocated to each Member State at the start of the programming period;
 - the weighting of the main criteria in paragraph 1(b);
 - the weighting of the sub-criteria on legal migration and integration in paragraph 3;
 - the weighting of the sub-criteria on irregular migration including returns in paragraph 4; and
 - the reference years to be considered by the Commission when calculating the allocations.
 - footnote emphasising the need to address, at a later stage, the matter of insular societies facing disproportionate migration;
10. The Presidency had the necessary support for the revised compromise proposal on the allocation criteria, but the enlargement of the partial general approach to include this Annex is left pending the outcome of the negotiations on the overall MFF 2021-2027.

III. INTERINSTITUTIONAL NEGOTIATIONS

11. In parallel to the work leading to an agreement on Annex I, the Presidency engaged in interinstitutional negotiations with the European Parliament on the basis of the mandate granted in June 2019.

12. The interinstitutional negotiations started on 9 October 2019 and both co-legislators stated their willingness to make progress while acknowledging that the Council mandate was only partial and that horizontal issues, which are identical or similar across the three Home Affairs instruments, required additional coordination within the European Parliament. Two trilogues and seven technical meetings were held which allowed for the completion of the first reading of the Regulation at the technical level. The Commission has been instrumental in facilitating the negotiations.
13. A number of additional technical meetings were held to discuss horizontal issues such as the obligations in terms of information, communication and publicity, the cumulative, complementary and combined funding, the processes in relation to the preparation of national programmes, as well as some terminology issues.
14. The Presidency kept delegations informed on the negotiations by debriefing them on the progress made in trilogues and technical meetings and by consulting them regularly on the EP amendments, compromise proposals and positions to be taken in the subsequent negotiations.

IV. **CONCLUSION**

15. In the light of the above, the Committee is invited to take note of the progress made on this file as set out above and notably on Annex I of the proposal, to be agreed only after the overall MFF agreement. The Presidency compromise text on Annex I is included in the Annex to this note⁶.

⁶ Changes vis-à-vis the original Commission proposal are highlighted in **bold underline** for additions and ~~strikethrough~~ for deletions.

[ANNEX I]⁷**[Criteria for the allocation of funding to the programmes under shared management]**

1. [The available resources referred to in Article 11 shall be broken down between the Member States as follows:
- (a) Each Member State shall receive a fixed amount of EUR **7 500 000** ~~5 000 000~~ from the Fund at the start of the programming period only;
 - (b) The remaining resources referred to in Article 11 shall be distributed based on the following criteria:
 - **35** ~~30~~ % for asylum;
 - 30 % for legal migration and integration;
 - **35** ~~40~~ % for countering irregular migration including returns.

⁷ **Particular emphasis is to be given to insular societies facing disproportional migration challenges. The issue/possible solutions will be discussed later.**

2. The following criteria in the area of asylum will be taken into account and shall be weighted as follows:
- (a) 30 % in proportion to the number of persons who fall into one of the following categories:
 - Any third-country national or stateless person having been granted the status defined by the Geneva Convention;
 - Any third-country national or stateless person enjoying a form of subsidiary protection with the meaning of recast Directive 2011/95/EU⁸;
 - Any third-country national or stateless person enjoying temporary protection within the meaning of Directive 2001/55/EC⁹
 - (b) 60 % in proportion to the number of third-country nationals or stateless persons who have applied for international protection.
 - (c) 10 % in proportion to the number of third-country nationals or stateless persons who are being or have been resettled in a Member State.

⁸ Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (OJ L 337, 20.12.2011, p. 9–26).

⁹ Data to be taken into account only in case of the activation of the Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof (OJ L 212, 7.8.2001, p. 12–23).

3. The following criteria in the area of legal migration and integration will be taken into account and shall be weighted as follows:
- (a) ~~50~~ 40 % in proportion to the total number of legally residing third-country nationals in a Member State.
 - (b) ~~50~~ 60 % in proportion to the number of third-country nationals who have obtained a first residence permit.
 - (c) However, for the purpose of the calculation referred to in paragraph 3(b), the following categories of persons shall not be included:
 - Third country nationals being issued a work-related first residence permits valid for less than 12 months;
 - Third-country nationals admitted for the purposes of studies, pupil exchange, unremunerated training or voluntary service in accordance with Council Directive 2004/114/EC¹⁰ or when applicable the Directive (EU) 2016/801¹¹;
 - Third-country nationals admitted for purposes of scientific research in accordance with Council Directive 2005/71/EC¹² or when applicable the Directive (EU) 2016/801.

¹⁰ Council Directive 2004/114/EC of 13 December 2004 on the conditions of admission of third-country nationals for the purposes of studies, pupil exchange, unremunerated training or voluntary service (OJ L 375, 23.12.2004, p. 12–18).

¹¹ Directive (EU) 2016/801 of the European Parliament and of the Council of 11 May 2016 on the conditions of entry and residence of third-country nationals for the purposes of research, studies, training, voluntary service, pupil exchange schemes or educational projects and au pairing (OJ L 132, 21.5.2016, p. 21–57).

¹² Council Directive 2005/71/EC of 12 October 2005 on a specific procedure for admitting third-country nationals for the purposes of scientific research (OJ L 289, 3.11.2005, p. 15–22).

4. The following criteria in the area of countering irregular migration including returns will be taken into account and shall be weighted as follows:
- (a) ~~60~~ **50** % in proportion to the number of third-country nationals who do not or no longer fulfill the conditions for entry and stay in the territory of the Member State and who are subject to a return decision under national and / or Community law, i.e. an administrative or judicial decision or act, stating or declaring the illegality of stay and imposing an obligation to return;
 - (b) ~~40~~ **50** % in proportion to the number of third-country nationals who have actually left the territory of the Member State following an administrative or judicial order to leave, whether undertaken voluntarily or under coercion.
5. For initial allocation the reference figures shall be **based on** the ~~latest~~ annual statistical data produced by the Commission (Eurostat) covering the ~~preceding three calendar~~ years **2017, 2018 and 2019** on the basis of data provided by Member States on the date of the applicability of this Regulation in accordance with Union law. For the mid-term review, the reference figures shall be **based on** the ~~latest~~ annual statistical data produced by the Commission (Eurostat) covering the ~~preceding three calendar~~ years **2021, 2022 and 2023 prior to the mid-term review in 2024** ~~available at the time of the mid-term review in 2024~~ on the basis of data provided by Member States in accordance with Union law. Where Member States have not supplied the Commission (Eurostat) with the statistics concerned, they shall provide provisional data as soon as possible.
6. Before accepting these data as reference figures, the Commission (Eurostat) shall evaluate the quality, comparability and completeness of the statistical information in accordance with normal operational procedures. At the request of the Commission (Eurostat), Member States shall provide it with all the necessary information to do so.]
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