



Council of the European Union
General Secretariat

**Interinstitutional files:
2018/0248(COD)**

Brussels, 08 October 2020

WK 10035/2020 INIT

LIMITE

**JAI
FRONT
ASIM
MIGR
CODEC**

WORKING PAPER

This is a paper intended for a specific community of recipients. Handling and further distribution are under the sole responsibility of community members.

WORKING DOCUMENT

From:	General Secretariat of the Council
To:	JHA Counsellors on Financial Instruments
N° prev. doc.:	CM 3586/20; WK 9631/20; WK 9626/20; WK 9818/20
N° Cion doc.:	10153/18 + ADD 1
Subject:	Proposal for a Regulation of the European Parliament and of the Council establishing the Asylum and Migration Fund – Comments from the delegations

Delegations will find attached a compilation of replies received from Member States on the abovementioned subject.

Written comments submitted by the Member States

**Proposal for a Regulation of the European Parliament and of the Council
establishing the Asylum and Migration Fund
(doc. WK 9631/20 and following informal videoconference of the members of
JHA Counsellors on Financial instruments on 22 September, 2020)**

Table of contents

AUSTRIA.....	2
BELGIUM	4
BULGARIA	5
CROATIA.....	10
THE CZECH REPUBLIC	12
ESTONIA.....	15
FINLAND	17
FRANCE.....	19
HUNGARY	25
LUXEMBOURG	26
MALTA.....	27
THE NETHERLAND	29
POLAND.....	31
PORTUGAL	32
ROMANIA.....	38
SLOVAKIA	40
SWEDEN	41

AUSTRIA

(WK 9626/2020 INIT): Proposal for a Regulation of the European Parliament and of the Council establishing the Asylum and Migration Fund - updated 4-column table
(WK 9631/2020 INIT): feedback on the lines

Line	Provision	Comment	AT-Position
138b-138e 165a-165e	Art. 9+13	The Presidency would like feedback on the EP's proposal. If the Council would have to accept some of these obligations which would be the least bad option (up to which %)?	138b-138e: min. percentages for the funding from the thematic facility to the specific objectives: AT is not accepting any minimum percentages within the thematic facility, bc this would limit the flexibility of the fund. The thematic facility should be used to target urgent needs of the MS in their sp.obj. and min.percentages would limit this possibility. 165a-165e: min. percentages for the specific objectives: AT is primarily opposing to any min.percentages, but if the Council would have to accept some of the proposed obligations by the EP, the least bad option would be to 10% per sp.obj.
200	Art. 18	To consider EP amendment.	Operating support: AT is fine with the reference to the Charter, but there should be ONE approach in all the Home funds proposals, when referring to the Union acquis. In this matter, AT supports the wording of the PGA.
211a	Art. 20		Union Actions: AT is fine with the EP proposal.
241	Art. 26	To reconsider Council position.	Emergency Assistance: Change of wording ("mass influx") done under AT-Presidency, because of CLS's suggestion to harmonize it with the wording of the Directive referred to in this Art. AT suggests to check with the CLS again as they were the ones to suggest the change.

Line	Provision	Comment	AT-Position
275a	Art. 30	To consider EP amendment.	Annual performance review: AT does not support the EP's AM and would prefer the wording of the PGA.
280a-280c	Art. 31a	To seek further arguments to support Council mandate.	AT would like to point out the aspect of confidentiality due to the classified or confidential nature of a measure where personal data is given.
387	ANNEX IV		Change to correct reference of Art. 12 (3) is fine for AT.
394	ANNEX V		AT does not accept the deletion in the PGA wording. All indicators should be linked to the support of the fund. To detect other numbers that are not linked to the support of the fund would lead to an increase of the administrative burden. The aim in assessing the indicators should be to gather information on the implementation status of the fund.
464	ANNEX VII	To consider using terminology in ISF.	AT kindly asks the Presidency to add the wording from the ISF in order to be able do an assessment.
466a	Annex VII	While the list of indicators can only be finalised once an understanding with the EP is reached on the legal text, the Presidency would like feedback on the principle behind the EP's idea.	AT thinks that it makes sense that indicators in ANNEX VII for which the MS are responsible are disaggregated by sex and age. Core indicators in ANNEX V, where the COM is responsible, should be more general and not be disaggregated by sex and age.

BELGIUM

Line 165 a-e:

BE is in principle against any form of minimum allocation to any specific objective inside the Fund. This goes against the principle of flexibility that should be given to MS to determine what their priorities are for EU funding. We would like to repeat/emphasize that EU funding comes with enormous administrative burden which could be a very good reason for a MS to choose NOT to use the AMIF funding for some objectives but to use national funding instead.

Line 200:

indeed unclear what 'immigration acquis' refers to (and how to prove that a MS complies?)

The other lines are fine for BE.

BULGARIA

138b-138e	Article 9 General provisions on the implementation of the thematic facility	<i>We confirm our position presented in September 2019 as first observations on EP amendments on AMF draft Regulation as follows:</i>
165a-165e	Article 13 Programmes	<i>We support the lack of limitation of the support to separate specific objectives of the fund which could provide flexibility and reflect the needs of MS.</i> <i>The introduction of minimum allocations of funding for each specific objective is considered as a limitation of the NP implementation and for its effectiveness and we could not support it.</i>
464	ANNEX VII Eligible actions for operating support – service costs, such as maintenance or replacement of equipment <i>or IT systems</i> ;	<i>We support the Council terminology in the PGA.</i>
466a	ANNEX VIII	<i>We support the list of indicators as per the PGA.</i>

Comments following informal videoconference of the members of JHA Counsellors on Financial instruments on 22 September, 2020)

Comments submitted on the full mandates presented by the Presidency on AMF (WK 9818/2020), BMVI (WK 9806/2020) and ISF (WK 9811/2020):

As agreed at the informal meeting of the members of the JHA Counsellors on Financial instrument of 22 September 2020, we are sending you our comments

The EUCO 10/20 provided for decrease in ISF funding with 22,76 % and change in proportion between shared management and thematic facility from 60/40 to 70/30 compared to the proposal of the EC. These results in decrease in the shared management allocation amounting to approx. 10 % compared to the proposal of the EC.

During Coreper II meeting of 04 December 2019 Bulgaria shared its position that we could not support such a decrease in the funding for security having in mind that countering organized crime and terrorism is among the main priorities in the EU political agenda. In this regard, we accepted the change in the proportion as a compensation for the decrease of the funding for ISF.

The full mandate proposal of the Presidency of September 2020 confirms the decrease of the amount for the ISF allocation (22,76%) in comparison to the EC proposal as agreed by the EUCO while keeping the initial proportion between shared management and thematic facility at 60/40 as proposed by the EC. This will lead to additional decrease of the allocation for the implementation of NPs compared to the proposal of the EC and Council PGA of June 2019 amounting to 22,76%.

Security threats are becoming more varied and increasingly cross-border in nature, which requires determined, complex and coordinated actions on EU level and by the national competent authorities.

Adequate financial support is needed for increasing the exchange of information between the law enforcement authorities and between them and relevant EU Agencies, strengthening the operational cooperation and enhancing the capacity of the national competent structures.

Establishment and maintenance of new and existing ICT systems and improvement of their interoperability as well as ensuring compatibility of national competent authorities technologies and capabilities will increase the effectiveness of the measures aimed at tackling the common security threats and in particular cross-border crime and terrorism.

Being located at the EU external borders, the Republic of Bulgaria shares the responsibilities for securing the common external borders and tackling security threats.

Therefore during the discussions in the Council Bulgaria has expressed its support for the need of adequate funding for security and border management.

The proposal for further decrease of the amounts for the NP does not correspond to the priorities and objectives in the area of security set out at EU level.

In this regard, we would not accept the proposal as per Article 7 Budget and we would like to request clarification for the deviation from the EUCO 10/20 proposal as regards the proportion between the allocation to the national programmes implemented under shared management and to the thematic facility.

Moreover, the 70/30 proportion for national programmes and thematic facility as proposed in the EUCO 10/20 is maintained in the full mandate proposal of the Presidency for BMVI.

We welcome the introduction of specific provisions in the three proposals relevant to the pre-financing in implementation of EUCO 10/20 No. 70 – Pre-financing. In line with our position for increased levels for pre-financing for the Home affairs funds, we support the suggested pre-financing annual rate at the level of 5 %.

Concerning the amendments in Annex I of AMF and BMVI following the Implementation of EUCO 10/20 No. 106, we support the suggested amendment in Annex I of AMF and BMVI which envisages an increase of the fixed amounts for Malta, Greece and Cyprus to EUR 25 000 000. Such an increase does not have to reflect in a decrease in the shares of the other MS.

For achieving fair distribution of the AMF and BMVI funding and observing the solidarity principle, we remind our position maintained from the very beginning of the negotiations in the Council and later during the inter-institutional negotiations that the years of the whole period 2014-2020 are to be included as reference years for distribution in Annex I. Following the principle for shared responsibility for provision of adequate protection of the common external borders of the EU and overcoming the security threats we consider that the new MFF is to provide enhanced support to the MS located at the EU external borders and that were most affected by the migration pressure in 2013-2016.

Concerning the amendments in the amounts in articles 16 and 17 of AMF we remind our position presented in August 2020:

The agreement on the new MFF reduced considerably the AMF thematic facility, which is to provide support to the implementation of Art. 16 and Art. 17. This development provides a worrisome signal that new legislative proposals of the EC will not again resolve the problems relevant to responsibility and solidarity in the EU. Such a conclusion could be supported by the suggested amendment of Art. 16 which function is to encourage the solidarity of the MS in the EU towards those MS located in the external borders. On the other hand, the decrease in the funds envisaged for resettlement as per Art. 16 will affect the integration of those people in the receiving MS which could be a serious incentive for secondary movements.

The Presidency indicated in the document its decisiveness that the discussions about the amounts must not, in any way, prejudice discussions and policy decisions to be taken by the Council on any possible future proposal tabled by the Commission in relation to CEAS. Although the envisaged revision clause (Art. 34a) could not provide enough guarantee that the suggested amendments will not have effect on political attitudes of MS towards the new suggestions. On the contrary, the MS, which currently refuse to relocate, will strengthen their position especially due to the decrease of the amounts.

We confirm our comment of September 2020 that as a compromise we can support the amounts as per the current period and remind that we requested clarifications:

1. What type of evidence shall be provided in order to receive the additional amounts referred to in Art. 17, Para 3 and 4?
 2. Will the possibility for the increase of the amount for the resettlement of TCN from Syria to EUR 10 000 as per the current period remain unchanged in the future AMF 2021-2027?
- Finally yet importantly we confirm our position maintained during the negotiations that we consider the increased at 20 % by the Council level of operating support not sufficient for the implementation of the AMF NP.

PUBLIC

CROATIA

1. Lines 138b – 138e, 165a-165e (Articles 9+13)

We do not support the Amendments from EP setting the minimal percentages for each specific objective from national programs and Thematic Facility. As stated before, Member States have different needs, especially those located at the external borders of the EU which are more exposed to migration pressures.

2. Line 200 (Article 18.) Operating support – references to Fundamental Rights

The use of Operating support should not be limited or binned with the principles and rights from the Charter of Fundamental Rights since the use of the support is intended for operational functioning of the national bodies.

The interpretation of the term “Immigration Acquis” by the EP is not acceptable since it is not a part of the European Acquis and could therefore lead to uncertainty in the application of the regulation.

References to Fundamental Rights are a horizontal matter (for all three funds) and should be discussed with the EP with a view of selecting a few most important provisions for EP in which the references to fundamental right are to be kept.

3. Line 211a (Art 20) Union actions

Since the proposed changes set the new obligations to the Commission, this matter should be discussed at the political level.

4. Line 241 (Art 26) Emergency assistance

With further clarifications from the EP, discussion on this issue should be held at political level.

5. Line 275a (Art 30) Annual performance report

We can be flexible.

6. Line 280a – 280c (Art 31a) Monitoring and reporting

We can support the Council text and the addition made.

7. Line 387 ANNEX IV Actions eligible for higher co-financing in line with Articles 12(2) and 13(7)

We can support the Council text and the deletion of references to Art 13, Para 7 from the heading.

8. Line 394 Annex V. Core performance indicators referred to in Article 28(1)

We can support the Council text and the deletion of: *Number of persons resettled with the support of the Fund.*

9. Line 464 ANNEX VII Eligible actions for operating support

Since in the ISF proposal term ICT systems is used, we propose using the same term here so that it can also encompass the communication equipment. This is also a horizontal issue.

10. Line 466a ANNEX VIII Output and result indicators referred to in Article 28(3)

We do not support the proposal to disaggregate the core performance indicators by sex and age, made by EP. This has a potential to create additional administrative burden for users and managing authorities.

THE CZECH REPUBLIC

Lines 138b-138e and 165a-165e

The Czech Republic does not support the minimum percentages as proposed by the EP.

Introducing such measure would not reflect specific needs of individual member states. Home Funds honor the principle of 3E and introducing quota could arguably lead to ineffectiveness. It would also increase member states' administrative burden, including the Czech Republic.

Decreasing the value of minimal percentages below the one proposed by the EP would not fully solve the issue either. Their hypothetical existence would (in our view) decrease the ability of member states to adapt to their individual unique situations and it would offer very little in return. For national programmes with low allocation the minimum percentages would fragmentize the resources into such low amounts for each objective, that there is high risk that some of the objectives of the Fund would be met. Therefore, the Czech Republic proposes abandoning the concept of minimal percentages in member states' national programmes altogether.

Line 200

The Czech Republic considers the EP's amendment as redundant. It is unnecessary to explicitly mention the CFR, as it has been part of the EU primary law since the entry into force of the Lisbon Treaty and applies in areas with a European element. In our point of view, this document is about general principles and if the CFR should be mentioned it should be in recitals.

The Czech Republic disagrees with the replacement of the word "return" with "immigration" because the term "immigration acquis" is broad, and it would require additional analysis of all immigration articles adopted under Article 79 TFEU for an adequate evaluation of the proposal.

Line 211a

The Czech Republic agrees with the EP's proposal.

Line 241

The Czech Republic supports the Council's proposal.

Line 275a

The Czech Republic can support the EP's amendment.

Lines 280a - 280c

This provision is intended to ensure both full compliance with GDPR and to safeguard efficient protection of financial interests of the EU. First, the need to comply with GDPR is explicitly confirmed. Second, both the possible processors and the purposes of processing are explicitly enumerated. This, in turn, enables each controller to specify relevant categories of personal data to be processed. Third, para 2 imposes a clear and uniform limit on storage of personal data. Fourth, by establishing a legal obligation to process relevant personal data, the financial interests of the EU are better protected against attempts to force deletion of personal data or limitation of processing of such data according to Articles 17, 18 and 21 of the GDPR.

Line 387

The Czech Republic agrees with the Council's wording. The original wording referenced the wrong paragraphs.

Line 464

The Czech Republic welcomes the addition of IT system as eligible actions for operating support, however, after consideration we could accept more precise terminology similar to the one used in the ISF regulation, that is “maintenance and helpdesk of relevant national ICT systems and networks contributing to the achievement of the objectives of this Regulation”.

Line 466a

The Czech Republic supports the DE PRES' proposal to provide more information on the principle behind the EP's idea. From our point of view, sex and age are not an essential indicator when it comes to immigration performance issues. Moreover, in the area of migration, this distinction is not so easy to make technically.

This proposal will mean a significant increase in the bureaucratic burden, although monitor these indicators will be of no use. The proposal only opens the way to the potential use of the instrument of quotas by sex and age, which is unacceptable for the Czech Republic.

ESTONIA

Line 138b-138e; 165a-165e

EE: Estonia fully supports the COM's initial proposal and the Council mandate, and cannot agree to introducing minimum allocations of funding for each specific objective in MS national programmes. Additional flexibility and simplification are the keywords for the next financing period. There is room for compromise when it comes to the thematic facility.

Line 200

EE supports the Council mandate.

Line 211a

EE does not oppose the EP proposal.

Line 241

EE can support the PRES proposal.

Line 275a

EE can be flexible with the EP proposal.

Lines 280a-280c

EE can support the PRES proposal.

Line 387

EE can support the PRES proposal.

Line 394

EE can support the PRES proposal.

Line 464

EE supports the PRES proposal and the use of terminology in ISF, especially regarding the use of term „ICT systems“.

Line 466a

EE cannot support the EP proposal. The target group of AMIF is very sensitive, therefore collecting the indicators disaggregated by sex and age would be very complicated and burdensome.

FINLAND

Line 138b-138e / Art. 9

Fi does not consider minimum percentages for Specific Objectives under the Thematic Facility purposeful. Maintaining flexibility is inevitable and these kinds of restrictions can be both harmful but cause also administrative burden and even unnecessary delays at a crucial moment. Thematic Facility should be maintained as a component with maximum reaction capacity which does not fit in well with the proposed restrictions. If percentages under the Thematic Facility are inevitable, keeping them as moderate as possible would be essential.

Line 165a-165e / Art. 13

The point of having a shared management fund is to let the MS decide on how to use the budget (within the framework) as the needs are different in every MS. Minimum % or obligations easily lead to more administrative burden, less flexibility, less focus on the real needs and quality of implementation but more on the %. However, minimum percentages for Specific Objectives are easier to accept under the National Programmes than under the Thematic Facility. For instance, a harmonized level of 10% per objective should be acceptable.

Line 200 / Art. 18

If the use of operating support is extended to all Specific Objectives, the references to the respective acquis are to be updated, too. However, we would suggest to consider replacing the term 'immigration' - proposed by EP - with the term 'migration' since it has a broader scope and also covers return. This would also be in line with the New Pact on Asylum and Migration.

FI can be flexible with the references to the Charter of Fundamental Rights.

Line 211a / Art. 20

Union actions - as a part of the Thematic Facility are an important means to react to the constantly evolving challenges and needs in the area of migration that are necessarily not covered by the National Programmes. In order to be able to swiftly adapt the allocation of funding to the changes in migration flows and to respond to the needs and changes in policy priorities, we should be careful with any such formulations that may limit this room for maneuvers.

Line 241 / Art. 26

FI can be flexible with the wording although it would be clearer to refer to the phenomenon rather than to the implementation of the directive.

Line 275a / Art. 30

This kind of information is reported through indicators. FI can be flexible though.

Line 280a-c / Art. 31a

Nothing to remark.

Line 387 / Annex IV

FI can be flexible. Council position is preferred.

Line 394 / Annex V

FI can be flexible.

Line 464 / Annex VII

FI can support the ISF wording to be used for AMF. However, the word 'replacement' in the original AMF text should be included in the new formulation in addition to 'maintenance' and 'helpdesk' already mentioned in the ISF annexes.

Line 466a / Annex VII

FI could be flexible here if there are meaningful and not too heavy ways to implement this in practice.

FRANCE

Discussions sur le document WK 9626/2020 visant la proposition de règlement FAMI

Nous saluons le rétablissement de l'intégration dans le nom du fonds (l 3 et suivantes, l 58 ; l 75...)

Nous ne souhaitons pas que soit imposées à l'État membre des conditions supplémentaires lors des retours sur les comptes annuels en imposant des détails de financement (l 64)

La France alerte sur la création d'obligations que le législateur européen n'a pas entendu faire peser sur les fonds JAI lors de la rédaction du règlement 2016/679 du Parlement européen et du Conseil, la référence au RGPD n'ayant pas lieu d'être ici L64a, 280 b.

Nous nous opposons aux ajouts liés au objectifs (l 65).

A. Sur les partenariats (lignes 48, 63a, 96a à 96c, 138a, 345)

- *Nous ne sommes pas favorables aux dispositions ou obligations de partenariats avec l'ensemble des autorités, associations, organisations, institutions, organismes, partenaires économiques et sociaux proposés par le Parlement, en raison notamment des champs d'intervention du volet relatif aux retours et à la lutte contre l'immigration irrégulière et de la complexité que cela induit. Les partenariats étant souhaitables mais ne devant pas être obligatoires à tous les volets, nous souhaiterions que le « shall » soit au moins remplacé par « may ». (l. 96a à 96c).*
- *Nous voulons rappeler que nous ne sommes pas favorables aux obligations de partenariat entre les fonds (l 121).*

B. Sur l'introduction de seuils minimaux et/ou maximaux ou de limites à appliquer à certains objectifs ou types d'actions, y compris dans les pays tiers (lignes 99a, 99b, 138b/c/d/e, 142, 165a/b/c/d...)

- *La France est opposée à tout « pré-découpage budgétaire » dans le règlement du mécanisme thématique et des programmes nationaux en faveur d'un ou de plusieurs objectifs du fonds ou d'un type d'actions.*
- *Nous sommes en effet très attachés aux principes de disponibilité et de flexibilité des ressources qui offrent une véritable capacité de réaction face à des phénomènes évolutifs et imprévisibles pouvant survenir sur toute la durée du cadre.*
- *De plus, des orientations liées à la finalité du fonds étaient déjà présentes dans le cadre financier 2014-2020 donc il ne nous apparaît pas nécessaire de rigidifier la gestion du fonds par des seuils trop précis en cas d'imprévus.*

Dans le détail:

La **ligne 99a** limite à 5% le montant total dans ou avec les pays tiers pour le mécanisme thématique.

La **ligne 99b** limite à 5% le montant total dans ou avec les pays tiers pour la gestion partagée.

- Si l'instrument de droit commun pour financer les actions extérieures est le NDICI, la France est cependant opposée à un plafonnement du financement de ces actions par le FAMI. Une telle disposition serait ainsi en opposition avec les conclusions du Conseil européen de juillet 2020, visant à accorder *une part significative* au financement d'actions extérieures par les fonds JAI.

Les **lignes 138 b/c/d/e** imposent un minimum respectivement de 20% pour l'asile, de 10% pour les besoins économiques et sociaux, de 10% pour l'intégration et de 10% pour assurer la solidarité et un partage juste des responsabilités entre les EM, dans le cadre du mécanisme thématique.

La **ligne 142** impose un minimum de 5% en faveur des autorités locales et régionales pour des actions d'intégration, dans le cadre du mécanisme thématique.

Les **lignes 165 a/b/c/d** imposent un minimum respectivement de 20% pour l'asile, de 10% pour les besoins économiques et sociaux, de 10% pour l'intégration et de 10% pour assurer la solidarité et un partage juste des responsabilités entre les EM, dans le cadre de la gestion partagée.

- La France est opposée à la fixation de seuils minimaux, que ce soit en gestion partagée ou dans le cadre de la facilité thématique. Fixer des pourcentages minimaux ne garantit pas que les objectifs poursuivis par ces politiques soient effectivement atteints. L'instauration de taux minimaux contreviendra inévitablement à la bonne gestion des enveloppes nationales en gestion partagée. La flexibilité budgétaire doit ainsi être privilégiée afin de faire face aux aléas de gestion.

C. Sur les obligations de vérification relatives aux infractions au titre des projets retenus par la Commission dans le cadre du mécanisme thématique et mis en œuvre par les États-membres dans leur programme national (ligne 140)

- *Nous sommes opposés à ce que des responsabilités de vérification portent sur les États membres alors même que le projet a été instruit et retenu par la Commission européenne au titre du mécanisme thématique. Toute obligation devrait en fait peser exclusivement sur la Commission européenne.*

D. Sur la mise en œuvre du fonds et les consultations relatives au mécanisme thématique et aux programmes nationaux (ligne 138a, 166, 167, 168)

- *Nous sommes défavorables à une consultation systématique de la société civile dans la préparation, la mise en œuvre, le suivi et l'évaluation des programmes nationaux, compte tenu notamment du champ politique d'intervention du fonds relatif aux retours et à la lutte contre l'immigration irrégulière, ces consultations n'étant pas adaptées à certaines actions couvertes par le fonds.*

- *Nous saluons le compromis proposé sur la consultation des agences par la Commission européenne lors des procédures d'élaboration, d'adoption et de révision des programmes nationaux des États membres. Attachés à un objectif de fluidité, d'efficacité et d'efficience, la consultation des agences par la Commission ne doit concerner que les agences directement compétentes dans les domaines concernés.*

E. Sur des taux minimaux de cofinancement contraignants et l'obligation d'un cofinancement des actions sur crédits nationaux (lignes 155, 156, 157)

- *Nous sommes d'accord avec les accords provisoires trouvés. En effet, nous sommes défavorables à la fixation dans le règlement de taux de cofinancement minimaux imposés aux États membres, ou à l'obligation pour l'État membre d'appliquer à une action le taux de cofinancement maximum possible pour ce type d'actions. La fixation du taux pour chaque action relève de l'appréciation propre de chaque État membre dans la mise en œuvre de son programme national, dans la limite du taux maximum autorisé. Dans cet esprit, nous nous opposons à la modification en l 157.*

F. Sur les conditions de niveau de paiements effectif à atteindre pour bénéficier de l'allocation à mi-parcours (ligne 176)

- *Nous soutenons le principe de révision à mi-parcours en vue d'obtenir l'allocation à mi-parcours.*
- *Nous sommes cependant défavorables à toute disposition fixant une condition de paiement pour bénéficier de l'allocation à mi-parcours.*

- *Si le principe d'un mécanisme incitatif pour la consommation de l'instrument peut être compréhensible et, dans une certaine mesure, souhaitable, une condition de réalisation de 30% de paiements est totalement éloignée des réalités de la gestion des fonds. En effet, une telle précondition avec un taux de réalisation aussi élevé est peu réaliste et pourrait s'avérer contreproductive pour la bonne gestion des fonds et la réalisation des objectifs opérationnels qu'ils soutiennent.*

G. Sur la valeur ajoutée européenne des actions spécifiques (ligne 179)

- *Nous sommes contre cette disposition proposée par le Parlement dans la mesure où elle ne fait l'objet ni d'une définition, ni de critères objectifs pour s'assurer que la condition est bien remplie ou non le cas échéant.*

H. Sur le soutien au fonctionnement (ligne 199)

- *Compte tenu de l'éligibilité de l'objectif migration légale et intégration prévue dans l'orientation générale partielle du Conseil, un seuil maximal de 20 % pour le soutien au fonctionnement apparaît plus adapté que le seuil maximal de 10 % initialement proposé par la Commission.*

I. Sur l'information, la communication et la publicité du fonds (lignes 173, 173a, 235...)

- *Nous sommes défavorables à des obligations de communication et de publicité trop systématiques et trop étendues au regard des domaines couverts par le fonds en matière de retour et de lutte contre l'immigration irrégulière et ne sont dès lors pas pertinentes. Elles doivent pouvoir être utilement limitées compte tenu du caractère sensible de certaines actions, de certains résultats et de certaines informations pour des raisons de sécurité, d'ordre public ou de protection des données personnelles, en plus des situations strictes de confidentialité et de classification. De plus, la traduction des supports de communication dans toutes les langues pertinentes (« relevant languages ») est une exigence inopérante compte-tenu de la diversité du public bénéficiaire des actions du fonds. Enfin, la publication sur les sites internet doit être considérée comme suffisante et ne pas nécessiter de transmission au PE et au Conseil.*

J. Sur l'évaluation et les rapports de performance annuels (lignes 263a à 263, l 268a...)

- *Nous ne soutenons pas les amendements proposés par le Parlement pour les obligations relatives à l'évaluation et aux rapports de performance annuels et appellent au contraire à la simplification et à l'allègement de la charge administrative. Certaines notions introduites par le Parlement, comme par exemple le terme de « rentabilité », ne sont pas adaptées aux politiques soutenues par le fonds.*

K. Autre élément important : Article 17(1) sur la relocalisation des demandeurs de protection internationale

Nous réitérons notre volonté d'obtenir un montant forfaitaire de 5000 euros pour les relocalisations de demandeurs d'une protection internationale, au lieu des 3500 euros proposés.

HUNGARY

The draft regulation already contains many restrictions on the possible usage of the fund and the process of planning and implementation is already loaded with administrative restraints. The mandatory minimum allocations would again work against the flexibility of the programme and further raise the administrative burden of the MSs.

Both the Presidency and the Commission emphasize that much more attention will be paid to flexibility in the next financial period. The EP's proposal makes it impossible to use resources flexibly by specifying what percentage of the national allocation should be spent on specific objectives.

According to line 165d, a minimum of 10% should be spent on solidarity between Member States: “to ensure solidarity and fair sharing of responsibility between the Member States, in particular towards those most affected by migration challenges, including through practical cooperation” which exact meaning we do not even know.

We cannot support the EP's proposal, either in terms of national allocations or thematic instruments.

Line 200

It is not clear why the EP should include the Charter of Fundamental Rights as a condition for operating supports. Hungary cannot support the proposal.

Line 275a

Hungary collects data on vulnerable people in the current financial period and also reports on them. We can accept the EP proposal.

Line 280a,b,c

Hungary supports the Council's proposal.

Line 466a

Hungary collects disaggregated data by sex and age in the current financial period as well. We can accept the EP proposal.

LUXEMBOURG

Comments following informal videoconference of the members of JHA Counsellors on Financial instruments on 22 September, 2020)

On the minimum percentage; LU would like to keep as much flexibility as possible. On a national level a minimum percentage would financing some projects very hard considering the Luxembourgish budget and structure. Thus we plead for full flexibility on that point for all three funds.

Concerning the EP's initial request to open up the text to intelligence, we welcome the fact that the EP has abandoned its request. We would like to join the Finnish statement and underline that such a request was never proper in the first place. Luxembourg opposes any inclusion of a reference to intelligence.

MALTA

Comments following informal videoconference of the members of JHA Counsellors on Financial instruments on 22 September, 2020)

Reference is made to the Presidency's General Approach Proposals for BMVI, AMF and ISF that were issued on 24 September 2020.

It seems that there is an understanding that fixed amount would be given to Member States in 2021 (as referred to in wk10973/20). However, this is not the case. The fixed amount is part of the initial allocation method, and like the rest of the allocation will be allocated to the Member States over a 7-year period. Although Annex I para (1)(a) states that the Member States will be granted the fixed amounts "at the start of the programming period only", this is only meant to make it clear that the mid-term review allocations will not include any fixed amounts.

Malta is also attaching the financial programming as provided by the Commission to the MFF group. One would have to assume that if the fixed amount was allocated to each Member State in 2021, then the likelihood would be that the amount in 2021 would be larger than the rest. However, in the case of all three funds, the amount programmed for 2021 in constant 2018 prices, is the lowest for the entire period.

It is to be noted that as shown in the table below, when compared to other Member States, in the case of Malta, in particular, the %s of the total initial allocations emanating from the fixed amounts are very large, as most of Malta's fixed amounts for BMVI and AMF are meant to compensate for the anomalies in the formulae:

Table: Indicative %s* of the Fixed Amount as a share of the Total Initial Allocation as per DE Presidency Proposal of 24 Sep. 2020

	EU+ Associated	Malta
BMVI	10%	66%
AMF	5%	64%
ISF	18%	35%

* the percentages above are only indicative in view of the unavailability of certain data to be used for the formulae. In such cases, the indicative data as deduced from the Commission's simulations of September 2019 have been used.

It would be inappropriate to allocate such high percentages of the total allocation in one year only. Furthermore, in line with our comments of 27 August 2020, the fixed amount of €25 million at 2018 prices should be translated to 2021-2027 prices and not to 2021 prices, in line with paragraph 3 of the EUCO Conclusions No 10/20 of 17-21 July 2020, stating that “*All figures are expressed using constant 2018 prices. There will be automatic **annual technical adjustments for inflation** using a fixed deflator of 2%*”. Thus, the €25 million at 2018 prices should amount to not less than €28 million at 2021-2027 prices and not to €26.5 million at 2021 prices. It is also noted that the rationale for translating the normal fixed amount of €7.5 million to €8 million is completely different – the latter was a decision of the Presidency as it stated in the JHA Counsellors meeting of 22 September 2020. Whilst we can accept this Presidency's proposal for the €7.5 million in the spirit of compromise, the translation of the €7.5 million should not affect the pricing translation of the exceptional fixed amount of €25 million, which was agreed by the Heads of State/Government. Otherwise, the fixed amount of €7.5 million should remain at current prices, as was agreed in the Partial General Approach.

THE NETHERLAND

Comments following informal videoconference of the members of JHA Counsellors on Financial instruments on 22 September, 2020)

Implementation of EUCO conclusions

Drafting suggestions (BMVI articles have been used to illustrate the changes)

- (34) Measures in and in relation to third countries supported through the instrument should be implemented in full synergy and coherence with and should complement other actions outside the Union supported through the Union's external financing instruments. In particular, in implementing such actions, full coherence should be sought with the principles and general objectives of the Union's external action and foreign policy related to the country or region in question. In relation to the external dimension, the instrument should target support to enhance cooperation with third countries and to reinforce key aspects of their border surveillance and border management capabilities in areas of interest to the Union's migration policy and Union's security objectives. **A significant component of the thematic facility is dedicated to tailored actions to address external migration.** ~~*In that context, a significant part of the funding from the thematic facility should be used to support actions in or in relation to third countries.*~~ *In its conclusions of 28 June 2018, the European Council underlined the need for flexible instruments, allowing for fast disbursement, to combat illegal migration.*

Article 8

General provisions on the implementation of the thematic facility

1. The financial envelope referred to in Article 7(2)(b) shall be allocated flexibly through the thematic facility using shared, direct and indirect management as set out in work programmes. Funding from the thematic facility shall be used for its components:
 - (a) specific actions;
 - (b) Union actions; ~~and~~
 - (c) *and* emergency assistance.

Technical assistance at the initiative of the Commission shall also be supported from the financial envelope for the thematic facility.

2. Funding from the thematic facility shall address priorities with a high added value to the Union or be used to respond to urgent needs, in line with agreed Union priorities as outlined in Annex II. ~~***A significant part of the funding from the thematic facility shall be used for supporting actions in or in relation to third countries in order to contribute to the protection of the external border and external migration management.***~~ **A significant component of the thematic facility is dedicated to tailored actions to address external migration.**

(...)

Article 25

Monitoring and reporting

1. In compliance with its reporting requirements pursuant to Article ~~***41(3)(h)(iii)***~~ ***[43(3)(h)(i)(iii)]*** of ***Regulation (EU, Euratom) 2018/1046*** ~~the Financial Regulation~~, the Commission shall present to the European Parliament and the Council information on performance in accordance with Annex V.
2. The Commission shall be empowered to adopt delegated acts in accordance with Article 29 to amend Annex V in order to make the necessary adjustments to the information on performance to be provided to the European Parliament and the Council.
3. The indicators to report on progress of the instrument towards the achievement of the objectives of this Regulation are set out in Annex VIII. For output indicators, baselines shall be set at zero. The milestones set for 2024 and targets set for 2029 shall be cumulative.

3a. The Commission shall also report on the share of the thematic facility used for supporting actions in or in relation to third countries.

POLAND

Line 138b – 138e, 165a – 165e

We are not in favor of adding proposed new obligations. They are not necessary to include in Regulation's proposal at level of articles.

Line 200

We are in favor of maintaining the wording proposed by the Council and the EC as regards the formulation: "shall comply with the Union acquis on asylum and return". Regarding the EP concerns it should be highlighted that Article 79.2.c of TFEU includes the issue of returns. Moreover, UE asylum and return acquis it is much broader concept than TFEU. However keeping the original wording we could accept reformulation by adding the word "immigration" e.g.:

"Union acquis on asylum, immigration and returns".

Line 241

The wording proposed by the EC and the EP could be accepted by PL.

Line 275a

We are in favor of maintaining the wording of the compromise ST 10148/19 Partial general approach (JHA Council on 7 June 2019).

Line 464

PL is in favor of maintaining the Council's proposal. It is important to include IT systems.

Line 466a

proposed obligation of reporting such information may cause additional administrative burden therefore we are in favour of maintaining the wording of the compromise ST 10148/19 Partial general approach (JHA Council on 7 June 2019).

PORTUGAL

Provisions and Lines	ST 10153/18 + ADD 1 (COM proposal – 471 final/ 471 FV 2)	A8-0106/2019 EP Position at the first reading adopted on 13/03/2019	ST 10148/19 Partial general approach (JHA Council on 7 June 2019)	PT comments
Art. 9 (General provisions on the implementation of the thematic facility)		<i>A minimum of 20 % of the funding from the thematic facility shall be allocated to the specific objective referred to in point (a) of Article 3(2).</i>		The Presidency would like feedback on the EP's proposal. If the Council would have to accept some of these obligations which would be the least bad option (up to which %)? PT does not support establishing minimum percentages for specific objectives. However, if this is the case, PT proposes a minimum percentage of 5% for each objective.
138b-138e		<i>A minimum of 10 % of the funding from the thematic facility shall be allocated to the specific objective referred to in point (b) of the first subparagraph of Article 3(2).</i>		
		<i>A minimum of 10 % of the funding from the thematic facility shall be allocated to the specific objective referred in point (c) of the first subparagraph of Article 3(2).</i>		
		<i>A minimum of 10 % of the funding from the thematic facility shall be allocated to the specific objective referred to in point (cb) of the first subparagraph of Article 3(2).</i>		

Provisions and Lines	ST 10153/18 + ADD 1 (COM proposal – 471 final/ 471 FV 2)	A8-0106/2019 EP Position at the first reading adopted on 13/03/2019	ST 10148/19 Partial general approach (JHA Council on 7 June 2019)	PT comments
Art.13 (Programmes) 165a-165e		<i>In that regard, Member States shall allocate a minimum of 20 % of their allocated funding to the specific objective referred to in point (a) of the first subparagraph of Article 3(2).</i>		The Presidency would like feedback on the EP's proposal. If the Council would have to accept some of these obligations which would be the least bad option (up to which %)?
		<i>Member States shall allocate a minimum of 10 % of their allocated funding to the specific objectives referred to in point (b) of the first subparagraph of Article 3(2).</i>		PT does not support establishing minimum percentages for specific objectives. However, if this is the case, PT proposes a minimum percentage of 5% for each objective.
		<i>Member States shall allocate a minimum of 10 % of their allocated funding to the specific objectives referred to in point (c) of the first subparagraph of Article 3(2).</i>		
		<i>Member States shall allocate a minimum of 10 % of their allocated funding to the specific objective referred to in point (cb) of the first subparagraph of Article</i>		

Provisions and Lines	ST 10153/18 + ADD 1 (COM proposal – 471 final/ 471 FV 2)	A8-0106/2019 EP Position at the first reading adopted on 13/03/2019	ST 10148/19 Partial general approach (JHA Council on 7 June 2019)	PT comments
		3(2). <i>[Am. 103]</i>		
Art. 18 (Operating support) 200	3. The Member States using operating support shall comply with the Union acquis on asylum and return.	3. The Member States using operating support shall comply with the Union acquis on asylum and <i>return immigration and fully respect the rights and principles enshrined in the Charter of Fundamental Rights of the European Union. [Am. 124]</i>	3. The Member States using operating support shall comply with the Union acquis on asylum and return.	Unclear what 'immigration acquis' refers to. EP points out that the immigration acquis would logically refer to all those measures adopted under Article 79 TFEU. The EP further notes the absence of a Treaty Article on Returns or even a mention of the word Return in the relevant Treaty Articles. Portugal awaits clarification of the meaning of 'immigration acquis'.
Art. 20 (Union actions) 211a		<i>4a. The Commission shall ensure flexibility, fairness and transparency in the distribution of resources among the objectives referred to in Article 3(2). [Am. 129]</i>		PT does not oppose the EP amendment.

Provisions and Lines	ST 10153/18 + ADD 1 (COM proposal – 471 final/ 471 FV 2)	A8-0106/2019 EP Position at the first reading adopted on 13/03/2019	ST 10148/19 Partial general approach (JHA Council on 7 June 2019)	PT comments
Art. 26 (Emergency assistance) 241	1. The Fund shall provide financial assistance to address urgent and specific needs in the event of an emergency situation resulting from one or more of the following: (b) the implementation of temporary protection mechanisms within the meaning of Directive 2001/55/EC;	(b) the implementation of temporary protection mechanisms within the meaning of Directive 2001/55/EC;	(b) <i>an event of mass influx of displaced persons</i> the implementation of temporary protection mechanisms within the meaning of Directive 2001/55/EC;	PT supports the Council partial general approach.
Art. 30 (Annual performance reports) 275a		<i>(ha) the number of vulnerable persons assisted through the programme, including children and those granted international protection; [Am. 161]</i>		PT does not oppose the EP amendment.
Art 31a (Processing of personal data) 280a - 280c			<i>Article 31a Processing of personal data</i>	PT supports the Council partial general approach.
			<i>1. For the purposes of the implementation of the AMIF with a view to achieving the objectives set out in Article 3, the Managing Authority, the Audit Authority and the beneficiaries, as data controllers, shall process, in accordance with Regulation (EU) 2016/679, the personal</i>	PT supports the Council partial general approach.

Provisions and Lines	ST 10153/18 + ADD 1 (COM proposal – 471 final/ 471 FV 2)	A8-0106/2019 EP Position at the first reading adopted on 13/03/2019	ST 10148/19 Partial general approach (JHA Council on 7 June 2019)	PT comments
			<i>data necessary for the common indicators in Annex VIII, for monitoring, evaluation, control and audit and, where applicable, for determining the eligibility of participants.</i>	
			<i>2. The personal data referred to in paragraph 1 shall be retained in accordance with Article 76 of Regulation (EU) No .../... [CPR].</i>	PT supports the Council partial general approach.
Annex IV (Actions eligible for higher co-financing in line with Articles 12(2) and 13(7)) 387	ANNEX IV Actions eligible for higher co-financing in line with Articles 12(2) and 13(7)	ANNEX IV Actions eligible for higher co-financing in line with Articles 12(2) and 13(7)	ANNEX IV Actions eligible for higher co-financing in line with Articles 12(2 3) and 13(7)	PT supports the Council partial general approach.
Annex V (Core performance indicators referred to in Article 28(1)) 394	1. Number of persons resettled with the support of the Fund.	1. Number of persons resettled with the support of the Fund.	<i>1. Number of persons resettled with the support of the Fund.</i>	In line with a negotiating approach, PT can agree with the initial wording (COM and EP).

Provisions and Lines	ST 10153/18 + ADD 1 (COM proposal – 471 final/ 471 FV 2)	A8-0106/2019 EP Position at the first reading adopted on 13/03/2019	ST 10148/19 Partial general approach (JHA Council on 7 June 2019)	PT comments
Annex VII (Eligible actions for operating support) 464	– service costs, such as maintenance or replacement of equipment;	– service costs, such as maintenance or replacement of equipment;	– service costs, such as maintenance or replacement of equipment <i>or IT systems</i> ;	To consider using terminology in ISF. PT waits for a new wording proposal.
Annex VII (Output and result indicators referred to in Article 28(3)) 466a	Output and result indicators referred to in Article 28(3)	Output and result indicators referred to in Article 28(3)	Output and result indicators referred to in Article 28(3)	While the list of indicators can only be finalised once an understanding with the EP is reached on the legal text, the Presidency would like feedback on the principle behind the EP's idea. PT is now comparing the three proposals (COM, EP and Council) and will come back later to comments on the lists of output and result indicators. However, PT underlines that the number of indicators should be necessarily short and focused on the important outputs and outcomes. Any dispersion would represent an unnecessary administrative burden.

ROMANIA

Comments following informal videoconference of the members of JHA Counsellors on Financial instruments on 22 September, 2020)

Regarding WK 9818/2020 (draft full mandate), RO can support the PRES DE compromise proposal with the following comments/suggestions:

- **In recital 3**, the new added sentence should be placed at the end of the text, as a conclusion drawn from the previous Council Conclusions.
- Regarding **article 16 (1)**, RO is in favour to maintain the amount of 10,000 Euro, similar to the current legal framework in the list of common Union resettlement priorities (Annex III of Regulation 516/2014), but in a spirit of compromise we can agree with the lump sum of **7,000 Euro**.
- Related to the lump sum set in **article 17 (1)** – to show flexibility we can support an amount not less than **5,000 Euro**.
- To be in line with the approach in article 32 para. (2), (3) and (6) where a mention is made to the articles relevant for adopting delegates acts, it is necessary to include also articles 16 and 17 as a reference.

Regarding the document WK 9626/2020 INIT RO has the following comments:

Line 138b-138 e and 165a-165e –

RO considers that, for a proper response of every Member State to the challenges related to the migration process, for a period of 7 years, it is necessary to keep a flexible Regulation which will allow to have swift responses in any type of migration crisis, so imposing percentages for every specific objectives to be financed from the thematic facility and from national programme are not proper measures which will sustain this flexibility. So, RO sustain the PGA and maintaining only 3 specific objectives. Nevertheless, the least bad option for RO would be the current EP proposal with 20% for asylum, 10% for integration/legal migration and return, both for thematic facility and national programme. We do not support the inclusion of a new objective related to solidarity.

Line 200 – we can agree with the EP position.

Line 211 a – we can be flexible on EP proposal.

Line 241 – for flexibility and to make progress in the negotiations of the Regulation we can agree to reconsider the Council proposal.

Line 275 a – for flexibility and to make progress in the negotiations of the Regulation we can agree with the EP proposal.

Lines 280 a-280 c, 387, 394, 464 and 466 a – we support the PGA.

SLOVAKIA

AMF:

As regard to lines 138 -165 - we have no preference when determining the minimum percentages for the thematic instrument, therefore we have no comments on the values set out in the text.

As regard to lines 200 we are stick to Council position.

For other lines we do not have any comments.

SWEDEN

Written comments submitted by Sweden ahead of Counsellor's meeting on September 22th 2020

Please find below Sweden's written comments on the updated 4-column table in
(WK 9626/2020 INIT) and on AMF article 16 (resettlement).

Art. 9 / Art. 13 General provisions on the implementation of the thematic facility/Programmes

Lines 138b-13e8 and 165a-165e:

- Sweden does not support the EP's proposed earmarking in the thematic facility nor in the national programmes. The proposed minimum percentages mean reduced flexibility for the implementation and an increased risk for decommitment.
- Conditions vary between Member States and thus, the EP proposal entail a risk that funds are used in areas of lower priority only because the funding would be decommitted otherwise.
- Fall-back: If the Council would have to accept some of the proposed minimum percentages, the Presidency should strive for them to be set primarily in the thematic facility (art. 9) and to an absolute minimum.

Art. 18 – Operating support

Line 200:

- Sweden can accept the EP proposal.

Art. 20 – Union actions

Line 211a:

- Sweden can accept the EP proposal.

Art. 26 – Emergency assistance

Line 241:

- Sweden is flexible and can support the EP proposal if the majority of the Member States do.

Art. 30 – Annual performance reports

Line 275(a):

- Sweden maintains its support for the Council position. The EP proposal entail an increased degree of details which is not desirable due to the risk of increased administrative burden for MS responsible authorities.

Art. 31a – Processing of personal data

Lines 280(a-c):

- Sweden maintains its support for the Council position.
- If desirable, the Presidency could propose to the EP that the provision in paragraph 1 is made optional, i-e- “may process”. According to article 6 of the GDPR it should be enough to regulate the possibility to process personal data.

Annex IV: Actions eligible for higher co-financing in line with Articles 12.3

Line 387:

- Sweden maintains its support for the Council position.

Annex V: Core performance indicators referred to in Article 28 (1)

Line 394:

- Sweden maintains its support for the Council position.

Annex VII: Eligible actions for operating support

Line 464:

- SE is flexible in relation to how the eligible actions are listed in Annex VII (current wording or inspired by the wording in ISF Annex VII). However, it is key that the reference to IT-systems remains.

Annex VIII: Output- and result indicators referred to in Article 28.3

Line 466a:

- It should be clarified which output- and result indicators the EP have in mind when referring to “core performance indicators”.
- Sweden can support that relevant indicators are disaggregated by gender, which is already the case in accordance to the partial general approach on AMF.
- Sweden is highly reluctant to the EP proposal concerning disaggregating indicators by age. The proposal would imply an increased and disproportionate administrative burden.

Article 16 - Resources for resettlement and humanitarian admission

- Sweden would like to thank the Presidency for increasing the amount for vulnerable groups in Art. 16(3) to 10 000 EUR. This financial incentive is of outmost importance for MS to be willing to resettle persons from this group.
- However, it is of great concern that the higher amounts are only applied to vulnerable groups as defined in the proposed Art. 16(3) and thus leave out the common Union resettlement priorities that are applicable for the higher amount of EUR 10,000 in the current AMIF (Annex III).
- The proposed wording in art 16.3 makes it very difficult in practice to determine if a resettled person belong to the category vulnerable group.
- Today 90% of Sweden's resettled persons fall under the common Union resettlement priorities. However, the wording in art 16.3 would in practice result in an unreasonable administrative burden, requiring decisions on an individual basis whether a resettled person belongs to any of the UNHCR priorities (emergency/ urgent/ normal) in combination with UNHCR's presentation category (women at risk, medical needs, etc) to be able to motivate if the person qualifies for the higher compensation.

Example

- Calculations based on UNHCR's categorization for the past years (2015-2019) show that the level of compensation Sweden would have received with the *proposed wording in article 16.3* amounts to 46.6 million EUR. The compensation to Sweden doing the same exercise but using the *wording in the current AMIF*: 61.7 million EUR.

- In other words, the new wording would have resulted in 15,1 million EUR less in compensation to Sweden during the period 2015-2019.
- This exercise illustrates clearly the substantive impact of the new wording in art 16.3 and the negative effects it will have on Member States showing solidarity and engaging in resettlement of persons from the most vulnerable groups.