Council of the European Union
General Secretariat

Interinstitutional files:
2018/0249(COD)

Brussels, 30 September 2020

WK 10266/2020 INIT

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MEETING DOCUMENT

From: To:	Presidency JHA Counsellors on Financial Instruments
N° Cion doc.:	10151/18
Subject:	Proposal for a Regulation of the European Parliament and of the Council establishing, as part of the Integrated Border Management Fund, the instrument for financial support for border management and visa - Compilation of replies

Delegations will find enclosed a compilation of replies to WK 9806/20 on the above proposal.

ANNEX

WRITTEN COMMENTS SUBMITTED BY THE MEMBER STATES

Regulation establishing the border management and visa instrument (BMVI) as part of the Integrated Border Management Fund

WK 9806/20

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BULGARIA

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.

FINLAND

We think that it is necessary to highlight the EUCO Conclusions of June 2018 especially here in the BMVI text and therefore we propose the following:

Recital 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. ***In line with the European Council conclusions of 21 July 2020, the thematic facility shall include a dedicated, significant component for tailored actions to address external migration.*** ~~***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.***~~ ***Also 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(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 component shall be dedicated for tailored actions to address external migration,*** ~~***part of the funding from the thematic facility shall be used to ad 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.***

ITALY

Italy supports the PCY proposed wording on external dimension for all three Funds.

MALTA

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.

NETHERLANDS

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.

ROMANIA

RO can support the Presidency compromise proposal. However, regarding Annex 1 bullet 11, we reiterate that a more equitable and sustainable approach would be to apply the following weighting factors for impact levels: 1 for low level, 2 for medium level, 3 for high and critical levels, taking into account the following:

- according with the EBCGA reports, there are important changes on the pressure of the migrations routes, for example between years 2017 and 2019 there is a 10 times gap on one route. A long term budget, must be elaborated based on durable data, but this kind of data are very volatile,
- The attribution of impact levels are based in particular on past data (occurred incidents), and not so much on vulnerability assessment.
- MS that had (or will have) difficulties on borders section had (or will) received top-up financing from emergency assistance or other instruments (like Emergency Support Instrument), so the balance between costs and financing had (or will) been done,
- MS that will have difficulties on borders section in 2021-2023, compared with MS that had difficulties at the similar scale in 2017-2019, will receive smaller allocation on the mid term review (adjustment of the allocations for the programmes), because the total amount to be allocated is 5 times smaller (3 billion vs 600 milion).