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WORKING PAPER

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INFORMATION

From:	Presidency
To:	Ad Hoc Working Party on JHA Financial instruments
Subject:	Summary of questions in reply to the AMF questionnaire

On behalf of the Presidency, delegations will find in annex the summary of questions in reply to the Asylum and Migration Fund questionnaire.

Summary of questions

AMF PROPOSAL:

Article 3:

- Regarding (2)a: Are also the landing sites in third countries meant under the CEAS external dimension?
- Several MS would like to have further information on the division between short-term integration (under the Asylum and Migration Fund) and mid/long-term (under ESF+). What does the Commission mean with short-term and long-term and how can AMF and ESF+ best cooperate with regard to integration measures?
- Regarding (2)b: The provision should be compliant with the Preamble (13) and Annex II pt. 2b and should refer to early-stage integration. Annex II, item 3 (b) mentions reducing incentives for irregular migration. Does it cover fighting irregular employment?

Article 5:

- Under the current AMF proposal, the possibility is created for third countries to take part in the Fund. This is a new possibility compared to AMIF. What is the rationale behind this possibility and how does the EC envision this? Especially concerning sound financial management and controlling mechanism.

Article 6:

- Upon which criteria a legal entity established in a third country may be eligible to the Fund? More clarification from the COM needed.
- When is an NGO considered eligible, if there is no particular or credible information available and it falls out of the scope of auditing and control of the Management Authorities of the Fund?
- In case of misuse of the Fund, which instruments do the Management Authorities, or even the European Commission and Court of Auditors have in their hands to possibly force the return of the money that has been granted?

Article 8:

- Is the allocation for the technical assistance included in the sum of financial allocation or is counted on the top?
- Further details on the allocation within the thematic facility would be appreciated. How will the Commission decide on the allocation of the EUR 4 166 000 000? How will MS be able to influence decisions on allocation?

Article 9:

- Regarding Par. 7. Does it mean that the Commission may unilaterally amend MS's programs?
- Can Specific Actions only be implemented through one MS?

Article 10:

- In the Bulgarian version of the proposal for AMF Regulation in Para 1 of Article 10 reference is made to Article 7 and 8, instead of Article 8 and 9. In Para 2 (English version) Article 63 of Financial Regulation is referred to. Is this reference correct? In principle Shared Management is set in Article 59?

Article 11:

- Concerning paragraph 2: It is unclear under what conditions funds shall be allocated to the thematic facility. Generally, the funds under paragraph 1b) should be allocated to the National Programs. In terms of para 1, could EC elaborate on the procedure for the allocation of funds to the national programs? How should the allocation be made, which kind of legal acts?

Article 12:

- It is not clear under which circumstances higher co-financing rates may be applied. This should be defined more precisely. Concerning para 2 and 3: scrutiny reservation in terms of the increased co-financing rates of 90 %. An appropriate share of national co-financing is necessary in order to ensure MS ownership. Paragraph 7 needs more clarification. What is the purpose of this paragraph?

Article 13:

- In paragraph 1 of this article it is mentioned that MS have to ensure that in the National Programs the implementation measures set out in Annex II are all adequately addressed. Can the EC explain how this should be read?
- It is not clear which conditions a MS has to meet in order to ensure that the priorities in its program are consistent with the Union priorities.
How shall a MS consult the COM when planning to implement a project in a third country?
Paragraphs 4, 5, 6 and 9 unclear.
- **Several MS** have the feeling that the role of the agencies is over-dimensioned. What kind of influence shall agencies have regarding the National Programme of a MS?

Article 14:

- An increased flexibility is to be welcomed to ensure an efficient use of the funds. It is unclear under what conditions funds shall be allocated to the thematic facility (see section 11) / to other Member States' National Programs. Clarification needed on "10% of the initial allocation of a programme"- what is taken into account when referring to this sum? In terms of para 1 and para 3, could COM elaborate on the procedure for the allocation? How should the allocation be made, which kind of legal acts?

Article 15:

- Does par. 2 only refer to specific actions?
- Further information on Specific Actions. Should they be implemented by a single Member State?

Article 16:

- How should paragraph 3 be read? In paragraph 1 it is mentioned that the contribution is not linked to the costs for resettlement. Hence, if the NL were to resettle 100 persons, the NL would receive € 1 million and according to paragraph 1 the NL would have the freedom to spend this on each of the objectives. However, why then can the NL not use the money to co-fund other priorities of the Fund?
- Does par. 2 mean that the amount may be allocated only if the person was ALREADY effectively allocated (i.e. before the amendment)?

Article 17:

- Regarding para. 6 and 7.: Why then can the MS not use the money to co-fund other priorities of the Fund?
- For which cases article 17 precisely intervenes? Which MS is entitled to the additional allocation? What are exactly the conditions for receiving the additional allocation(s)?
- The Dublin Regulation is not approved yet, but there is one pending question regarding 17 (7): What means “effectively transferred, “effectively returned or registered“?
- Does par. 3 and 4 mean that when a member state receives any amount under paragraphs 1 and 2 then it is eligible for additional contribution for ANY person granted international protection (also those not related to pars 1 and 2)? Does par. 7 mean that the amount may be allocated only if the person was ALREADY effectively transferred (i.e. before the amendment of the programme)?

Article 18:

- Clarification needed what is meant by “public authorities responsible for accomplishing the tasks and services which constitute a public service for the Union”. Why is it necessary to justify operating support in each annual performance report?
- Is it also possible to use the operating support to cover the maintenance costs of IT systems?
- Is it possible to add other operational support areas, such as running costs?
- How is compliance with the Union acquis on asylum and return defined? The criteria included in preamble (32) are not clear as for the meaning of “a clear risk of a serious breach by the MS of the Union’s values”.

[Article 20:]

- An additional paragraph should be included on how MS should be involved in the programming process of the annual working programmes. Para. 1 should be integrated into Art. 2, since it contains definitions. Scrutiny reservation in terms of para. 3. What exactly is meant by “financial instruments” in para. 3? What is the scope of this regulation? Under what conditions should this be applied? What is the relationship between para. 3 and Art. 22 (blending)?

[Article 28:]

- Article 28(2) stipulates that the Commission may amend Annex V. However, if the core performance indicators are changed throughout the reporting time, there may be a risk that necessary data was not recorded from the on-set. How does the Commission envision this?

[Article 31:]

- The last sentence of paragraph 1 should be deleted, because that would lead to enormous amount of administrative burden during the implementation period. Since Annex IV doesn't contain any table what is meant by “monitoring and reporting shall be based on the types of intervention set out in tables (...)”?

[Article 34:]

- Under which circumstances shall it be possible to use the financial envelope to cover expenses necessary to ensure transition between the AMF and the AMIF?
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[ANNEX I:]

- Para 1 – Will the distribution of funds for national programmes at EU level 30 % for asylum/30 % for integration/40% for return apply also for the distribution at the level of each national programme? If this distribution applies also to each national programme, the allocation for return should be increased.
- Para 5 - The reference figures should cover the whole period 2014-2020 thus including the years with enhanced migration pressure to the EU external borders. In this way the migration and asylum situation in the EU MS will be better reflected. It is important to ensure adequate support to those EU MS that could be exposed at new mass influx of migrant flows in view of the future prospects for possible enhancement of migration pressure.
In case as reference figures are used the 2017, 2018 and 2019 what will be the timing for announcing the MS allocations so as to provide enough time for programming? It should be noted that Eurostat data for 2019 will be available not before early 2020.
- Could the COM please explain why the persons being resettled are considered separately from the total number of persons granted international protection?
- Annex I p(3)(c) – Why do the calculations exclude the persons arrived under the Mobility and Researchers Directive?
- The criterion for resettlement includes i.a. a note "-are being resettled". How should this be verified on the basis of the statistical data produced by Eurostat if the actual resettlement has not taken place yet?
- Do the fixed percentages regarding the allocation also need to be applied by the MS in the distribution of money to the specific objectives? If yes, some flexibility within the 30/30/40 rates depending on each Member State's needs is suggested.
- Regarding par 3 (c) first dash, are third country national entering the MS territory with a country visa (reason for travel – work) excluded? If the person receives a second visa of this kind they are included in the calculation. In some MS migration flows are often circular. These migrants should be subject to integration measures as well, therefore be included in the calculation of the allocation.

ANNEX II:

- The proposals do not include minimum percentages to be spent on the specific objectives like there are for the AMIF and ISF security fund (2014-2020). By not including minimum percentages the flexibility is increased. How will the EC ensure that the diverse set of objectives of the fund will be achieved? How will the EC ensure that no single objective may, nationally or even EU-wide, fall entirely through the cracks?

ANNEX III:

- Could you please specify whether the IT and ICT systems are also eligible under AMF, e.g. does the p (1)(b) cover also the IT/ICT systems as it is not mentioned specifically?
- In p (2)(b) it is brought out that the Fund shall support the conducting of the asylum procedures. Could the EC please specify what is covered by that?
- In p(1)(e) it is stated that the Fund shall support the assistance and support services consistent with the status and the needs of the person concerned. Could the EC please clarify whether it is possible to cover the costs of improving the conditions of reception and detention, for example the social assistance, counselling, medical or translation services (also at the detention centre)?
- Integration target group (e.g. Annex III p (3)(a)) – As integration is a two-way process, it is not reasonable only to offer activities to or inform the third country nationals, therefore it is necessary to clarify whether it is possible also to involve the locals etc. to some activities?
- Some aspects of the employment are included in the Art. 3 (b) / 4 (d) of the Annex III. Is it considered to be a complementarity with the ESF+ programme?
- Pt. 3g.: We would like to know which actions are eligible to be financed under the AMF, ESF+ and ERDF?

ANNEX IV:

- In article 13 under 7 it is mentioned that MS must strive for execution of actions mentioned in Annex IV. By delegated acts the EC can change this annex. What does this mean for the cofounding percentages of already started actions?

ANNEX V:

- Under the specific objective 1 p(2) the indicator „number of persons in the reception system as compared to the number of asylum applicants“ is brought out. Please clarify whether it should be a comparison between the asylum applicants and persons granted the protection even if both of them are actually in the application process?
- Specific objective 3 (1): Is the indicator “Number of returns following an order to leave compared to the number of third-country nationals ordered to leave“ related to the general number of returns in a Member State or related to the returns funded by the Fund?

ANNEX VI:

- CEAS code 006 – should the term „admittance“ be used instead of the term „resettlement“? Or should the term „humanitarian admission“ additionally be included?
- CEAS and III. Return – the special needs/vulnerability has been covered by different level of detail. In the field of return the „vulnerable persons/UAMs and in the field of CEAS the children in migration and persons with special reception and procedural needs have been brought out. Please clarify why in the field of CEAS the broader term („children in migration“) has been used or there is a specific reason for a broader definition to cover also the victims of human trafficking, if needed?
- Table 1 of the Annex VI: Will it be possible to mix several types of intervention in one action / project?

ANNEX VII:

- Please clarify whether it is also possible to use the operating support to cover the maintenance costs of IT systems as it is not clearly brought out in Annex VII?

ANNEX VIII:

- Specific objective 2 (3.b): indicator related to the employment is included. Is it considered to be a complementarity with the ESF+ programme?
 - Some of the specific objectives are more of a long-term nature and would have rather been expected in ESF+. How do these two funds relate to each other in that regard? How does AMF intend to contribute to long-term integration objectives, such as labour market integration (specific objective 2(3b))?
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