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WORKING PAPER

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From:	Presidency
To:	Ad Hoc Working Party on JHA Financial instruments
Subject:	Summary of replies in relation to the Internal Security Fund

With reference to the Ad Hoc Working Party on JHA Financial instruments meeting on 24 September 2018, delegations will find a summary from the Presidency of comments from Member States on the Internal Security Fund.

Ad-Hoc Working Party ISF

Summary of questions of Member States with regards to the meeting on 23 July 2018

Article 1:

- No questions asked.

Article 2:

- Several MS ask the COM for clarification of the terms:
 - 'emergency situation',
 - 'blending operations' – when can they be applied, is it mandatory to apply such operations in the programme?
 - 'serious crime'
 - 'tackling corruption'
 - general definition of 'external borders'
 - thematic facility
 - Specific Action
- Can information about the calls (e.g. open call, registered call, or direct award) be added to the text?
- Can preventive surveillance be considered 'crime prevention'?
- Maritime aspects also play a major role in an increasingly uncertain context. Do Maritime Rescue Coordination Centres (MRCCs) qualify as 'critical infrastructure' within the meaning of point (c)?
- The proposal stipulates that in case of cyber-dependent crimes, the devices and systems are either tools for committing the crime or the primary targets of the crime. Cyber-enabled crimes, which involve devices and systems (are tools and targets at the same time) are not included in the definition. MS asks the COM to clarify the definition as it should be uniform EU-wide.
- Can relevant activities (*as it is mentioned in Art. 6.2*) be included here?

Article 3:

- Can sub-paragraph 1 be more specific about the inclusion of all different aspects of dealing with crimes: including prevention, preparedness, resilience and consequence management?
- Are counter-terrorism exercises at sea defined as objectives of the fund?
- Several MS mention the inclusion of 'prevention' in general and 'prevention of terrorism and radicalisation' into the wording of the text.
- MS advise the COM to include 'hybrid threats'; 'assisting' and 'protecting' victims of crime in the wording.
- Taking into account that natural- and human-made disasters are a security aspect within every European country, could the COM consider amending the wording to include 'natural- and human-made disasters' into the text?
- Will the implementation of the so called 'hard projects' be possible under the mandate of this fund? If yes, under which specific objective would it be possible?
- Considering that small crimes, such as burglary or identity theft, may as well be the origin of criminal activities, could the wording of Art. 3.2.(b) be adapted accordingly?

Article 4:

- Could the support of purchasing innovative, more humane coercive equipment (in the spirit of the EU Charter of Fundamental Rights) be eligible for funding?
- Several MS ask the COM for clarification of the terms:
 - 'standard equipment',
 - 'standard means of transport',
 - 'standard facilities of law enforcement'
 - 'emergency situation'
- Subparagraph (d) sets out that any equipment with a customs function cannot be financed under ISF but must come from the Customs Instrument. given that many items of law enforcement equipment for checking materials (e.g. sniffer dogs) can also have a customs function, MS recommend a more flexible wording in the text.
- With reference to Article 12(4) MS would like to request an elaborate explanation on the 15% calculation principle for the purchase of equipment, means of transport or construction of security related facilities. Is the 15% ceiling calculated from the total programme allocation or only from Specific Actions?
- MS needed clarification from the COM regarding the rationale behind the inclusion of 'actions limited to the maintenance of public order at national level' as non-eligible actions.
- Could the COM demonstrate the reasons for not accepting the inclusion of dual use equipment as, for instance, is the case of the equipment for customs control, which may result of clear advantage for the prevention and fight against illegal migration and human trafficking in cargo ships?

Article 6:

- No questions asked

Article 7:

- MS would like to request the Commission to reconsider the percentage of the financial envelope allocated for technical assistance for the Fund. The financial envelope which can be allocated for technical assistance at the initiative of the MS should be indicated in the regulation.
- MS advise the COM to reconsider reducing the financial resources for the thematic facility and allocate more funding for the national programmes under shared management.

Article 8:

- Several MS need clarification of how the thematic facility is managed. The criteria on which the allocation of the financial resources is based, and in particular the resources for the national programmes, as well as the role of the Member States in the decision-making process should be elaborated in more detail. Who decides about the amendment and revision of national programmes?
- It would be desirable for thematic targets for the specific actions under the thematic facility to be set at the beginning of the funding period, with the involvement of the Member States. Otherwise if there are still large sums from the thematic facility to be spent at the end of the funding period, experience shows that it will be difficult to find suitable project partners. MS therefore need clarification from the COM in that matter. Do MS participate in the financing decision from the thematic facility?

- Does the COM unilaterally amend national programmes? MS advise the COM for more transparency and predictability of the mechanism, and need the COM to consider the increased administrative burden that the MS might have through the mechanism of the thematic facility.

Article 9:

- No questions asked

Article 10:

- MS advise the COM to revise the minimum threshold imposed of 10% on payment requests until 2024.
- MS advise the COM to reconsider that unused allocated amounts should be redistributed to the MS.

Article 11:

- MS suggest the COM changing the wording of this article to be in line with article 16 of the Horizontal Regulation 514/2014. MS opinion is that current mechanism will increase the administrative burden caused by reporting to the COM.
- MS ask the possibility to include PNR for 90% eligible expenditure in ANNEX IV.
- MS suggest adding 'projects which aim to counter cybercrime' and 'projects which aim to counter particularly harmful organized crime structures in accordance with EMPACT' to ANNEX IV.
- MS need confirmation if it is possible to have 90% union contribution within the NP related to the priorities which are listed in ANNEX IV.
- MS ask the COM for reconsidering a more simplified and flexible approach to lay down co-financing rates.

ANNEX II:

- MS want to clarify if the support of SIS II within ISF is not going to influence the support of SIS II within BMVI. MS would like to clarify and explicitly mention in the text, that this support does by no mean prevent the BMVI support for the same type of actions. In order to avoid overlapping of the funds, there is a more elaborated method is needed to separate the components of SIS II financing.
- MS want to clarify if only Union IT Systems and Communication Networks are eligible for funding? MS advice the COM to include national IT Systems, Communication Systems and National Security Relevant Information Exchange Tools in the wording.
- MS ask the COM to consider the inclusion of fight against terrorism in the ANNEX II since it is a high priority of the Union.
- MS need clarification patrol activity .Since it is typically a law enforcement service performed by uniformed officers, would "joint controls" include patrol activity as eligible actions of the fund?
- Why are listed actions (e.g. investigations teams) are entailed exclusively to EMPACTs where is other areas, e.g. an anti-terror field operation could also be immensely important?
- MS advice the COM to add the word "potential" in regard of "victim protection" and include prevention in the text.
- MS advise the COM to include 3rd neighbouring countries and other relevant actors in ANNEX II.
- MS would welcome more information about the inclusion of 'risk and crisis management' within the fund, since it is included neither in the implementation measures nor in the list of actions supported by the fund.

ANNEX III:

- Is the understanding of the MS correct that in the next financial period the ISF can only support trainings which are based on LETS and which are implemented in cooperation with CEPOL or EJTN?
- MS ask for clarification whether IT-equipment and communication systems are considered under the umbrella term of “equipment” within the meaning of this regulation. In other words, are IT-equipment and communication systems included in the 15% limitation? Are registers and databases eligible for funding too?
- MS suggest that NGOs, international organizations, and actors from private sector are included in the wording regarding the list of potential actors of cooperation.
- MS ask if actions listed under Annex III are considered as guidelines, or is there a possibility to amend those in the course of political dialogue?
- MS require the COM to clearly explain the meaning of ‘essential security relevant facilities’. It would be important for the MS to ensure a more flexible application of their national programmes.