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WK 12389/2020 INIT

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WORKING PAPER

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From:	Presidency
To:	Delegations
Subject:	Proposal for a Regulation of the European Parliament and of the Council establishing the Asylum and Migration Fund (AMF) 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 (BMVI) Proposal for a Regulation of the European Parliament and of the Council establishing the Internal Security Fund (ISF) - Horizontal provisions

With a view to the informal meeting of the members of the JHA Counsellors on Financial instruments on 11 November 2020, delegations will find enclosed a summary of the outcome of the last technical meeting on horizontal provisions on the above proposals.

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Technical meeting on 29.10.20 (15:00 - 18:00)**Horizontal provisions (AMF, BMVI, ISF)****Agenda+ provisional outcome**

Topic	AMF	BMVI	ISF	Outcome
Timeframe of the Fund/ instrument	Article 1 (lines 75, 76)	Article 1 (lines 93-95)	Article 1 (line 74-79)	EP reluctant to agree on the timeframe for AMF (para 1). MFF horizontal issue. Para 1 could be considered as provisionally agreed in BMVI and ISF. Provisional agreement to harmonise paragraphs 2 in AMF, ISF and paragraph 3 in BMVI including a reference to specific objectives and measures.
Eligible entities	Article 6 (lines 107-116) Article 18a (lines 204a-204j)	Article 5 (lines 132-140) Article 16a (lines 239-247)	Article 5 (lines 140-148) Article 15a (lines 240-248)	EP still unsure about the location of the Article. COM and Council prefer it in the section under direct/ indirect management. COM will come with examples and eventually a revised compromise text.
Role of Commission in programming	Line 165	Line 192	Line 200	COM to issue a text compromise proposal, reflecting the role of COM under shared management. It will propose to delete the

				reference to the Commission and add a sentence at the end with a reference to Art. 18 CPR (Approval of programmes).
Information, communication and publicity	Article 25 accompanying recitals (lines 234-236a)	Article 22 accompanying recitals (lines 263-267)	Article 21 accompanying recitals (lines 265-268)	Para 1: Possible agreement on the last COM drafting suggestion. The EP will still check internally and come back. Para 2: Agreed. Para 2a: EP requested further alignment of the recital to the FR. COM asked to put forward an updated recital. Para 2b (BMVI only): To be dropped. EP to confirm.
Evaluation	Article 29 (lines 261-263l)	Article 26 (lines 294-304)	Article 25 (lines 291-301)	Discussions based on a new COM drafting suggestions building on EP's proposal. EP against the deletion of "<i>The evaluation shall, as appropriate, be accompanied by a legislative proposal for the revision of the Regulation</i>". Presidency: Important to align to the CPR Art. 40 and standards of COM regarding evaluations. MS requested to have para 2 (only applicable to ISF) for AMF/ BMVI. EP warns this might be a problem for the EP. (In this context, COM has deleted the part on the risks

				for the safety or privacy on individuals arguing that the treatment of personal data by COM is covered by FR and the CPR). EP will provide feedback on the Article.
Annual performance reports	Article 30 (lines 265-273, 276-277)	Article 27 (lines 306-322)	Article 26 (lines 302-315)	Discussions based on a new COM drafting suggestions (lines below refer to <u>AMF</u>). Lines 266-268a: EP to withdraw amendments on publication and on annual accounts (covered by CPR). Line 270: EP against the deletion of "<i>in particular those in or in relation to third countries</i>". EP request to refer to "<i>the coordination, coherence and complementarity</i>" as in the Article on Evaluation. Presidency prefers to stick to the language in the CPR. New line proposed by COM including reporting on "<i>the implementation of projects in, or in relation to a third country</i>" to be checked by Council. Line 276. EP insists on publication and submission of summaries of the national performance reports. Possible solution to be further explored: To foresee in the template of annual performance reports a section called "summary". All

				summaries would then be compiled and published by COM in various EU languages. COM would make them available on the Open Data Platform.
Processing of personal data	Article 31a (lines 280a-280c)	Article 28a (lines 323-325)	Article 27a (lines 319-321)	EP: To be discussed internally but sceptical. Why COM did not propose it? Retention period becomes politically sensitive. Reference to the CPR in point 2 legally unnecessary if the CPR applies in any case. COM: Direct and indirect management covered in the FR. To check if other Funds covered by the CPR have similar provisions. Presidency/ CLS: Transparency towards the data subject. It should not make any difference. compared to what is in CPR but transparency towards data subject.

ANNEX I

Origin: European Commission

Date: 28.10.20

Drafting suggestions on Article Evaluation (Art. 29 AMF, Art .26 BMVI, Art. 25 ISF)

1. By 31 December 2024, the Commission shall carry out a mid-term evaluation of this Regulation. Without prejudice to Article 40(1) of the Regulation [CPR], the mid-term evaluation shall assess the following:

(a) the effectiveness of the Fund/Instrument, including the progress made towards the achievement of the objectives of this Regulation, taking into account all relevant information already available, in particular [the annual performance reports referred to in Article 26 ISF/Article30 AMF/Article27 BMVI and] the output and result indicators set out in Annex VIII;

(b) the efficiency of the use of resources allocated to the Fund and of the management and control measures put in place to implement it;

(c) the relevance and appropriateness of the implementation measures set out in Annex II;

(d) the coordination, coherence and complementarity between the actions supported under the Fund/Instrument and support provided by other Union funds

(e) the EU added value of actions implemented under the Fund/Instrument;

For AMF only [f] the contribution to Union solidarity in the field of asylum and migration].

That midterm evaluation shall take into account retrospective evaluation results on the effects of the Internal Security Fund (Asylum, Migration and Integration Fund) for the period 2014-2020.

1 a. Without prejudice to Article 40(2) of the Regulation [CPR], the retrospective evaluation shall include the elements listed in paragraph 1. In addition, the impacts of the Fund shall be evaluated [AM107]

2. For ISF only:

The Commission shall ensure that the evaluations do not include information the dissemination of which may jeopardise security operations. [AM108]

3. In its mid-term and retrospective evaluations, the Commission shall pay particular attention to the evaluation of actions by, in or in relation to third countries in accordance with Article 5, Article 6 and Article 13(8) (AMIF) / Article 5 and Article 12(10) and (11) (BMVI)/ Article 5 and 12 (8) (ISF).

Commented [A1]: Consistency with CPR terminology

Deleted: present

Commented [A2]: Addition is needed as text introduces new provisions on the top of CPR provisions

Commented [A3]: Alignment with HOME Fund terminology

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Commented [A5]: Alignment with CPR

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Commented [A7]: Alignment with wording of Reg.514/2014 Art.57(2) b

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Commented [A8]: To reflect terminology in use for the current funds

Deleted: previous instrument for financial support for i

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Deleted: (AMIF)/border management and visa (BMVI)

Deleted: The evaluation shall, as appropriate, be accompanied by a legislative proposal for the revision of this Regulation.

Deleted: By 31 December 2030, the Commission shall present a retrospective evaluation of this Regulation. By the same date, the Commission shall submit an evaluation report to the European Parliament and to the Council,

Deleted:

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Deleted: with a view to feeding into a decision on a possible renewal or modification of a subsequent fund

Deleted: The mid-term and the retrospective evaluation shall be submitted to the Parliament and the Council without delay and shall be made publicly available.

Commented [A15]: This part of the sentence is deleted as the treatment of personal data by the COM is covered by the Financial Regulation and the CPR

Deleted: create a risk for the safety or privacy of individuals or

Deleted: review

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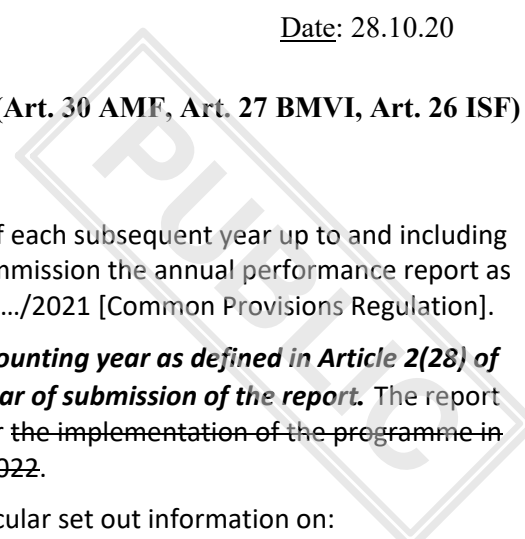
Origin: European Commission

Date: 28.10.20

Drafting suggestions on Annual performance reports (Art. 30 AMF, Art. 27 BMVI, Art. 26 ISF)

1. By 15 February 2023 and by the same date of each subsequent year up to and including 2031, Member States shall submit to the Commission the annual performance report as referred to in Article 36(6) of Regulation (EU) .../2021 [Common Provisions Regulation].

The reporting period shall cover the last accounting year as defined in Article 2(28) of Regulation (EU) .../... [CPR], preceding the year of submission of the report. The report submitted ~~in~~ **on 15 February 2023** shall cover the implementation of the programme in the period **from 1 January 2021 to 30 June 2022**.


2. The annual performance report shall in particular set out information on:
 - (a) progress in the implementation of the programme and in achieving the milestones and targets, taking into account the latest data as required by Article [37] of Regulation (EU) .../2021 [Common Provisions Regulation];
 - (b) any issues affecting the performance of the programme and the action taken to address them, ***including information on any reasoned opinion issued by the Commission in respect of an infringement under Article 258 TFEU linked to the implementation of the Fund/Instrument;***
 - (c) the complementarity between the actions supported ***under this by the Fund/Instrument*** and ***the*** support provided by other Union funds, ~~in particular those in or in relation to third countries;~~
 - (d) contribution of the programme to the implementation of the relevant Union acquis and action plans ***and to cooperation and solidarity between Member States [AMF only];***
 - (e) the implementation of communication and visibility actions;
 - (f) the fulfilment of the applicable enabling conditions, and their application throughout the programming period;
 - (g) ***[AMF only] the*** number of persons resettled ***or admitted*** with the help of the Fund in line with the amounts referred to in Article 16(1) ***and (2);***
 - (h) ***[AMF only]*** the number of applicants for or beneficiaries of international protection transferred from one Member State to another in line with Article 17
 - (i) ***the implementation of projects in, or in relation to a third country***
3. The Commission may make observations on the annual performance report within two months of the date of its receipt. Where the Commission does not provide observations by that deadline, the report shall be deemed to have been accepted.
4. In order to ensure uniform conditions for the implementation of this Article, the Commission shall adopt an implementing act establishing the template for the annual performance report. This implementing act shall be adopted in accordance with the advisory procedure referred to in Article 33(2).

Origin: European Commission

Date: 15.10.20

Drafting suggestions on Information, communication and publicity (Art. 25(1) AMF, Art. 22(1) BMVI, Art. 21(1) ISF)

Following last technical meeting on horizontal provision, the Commission was invited to suggest another compromise proposal reflecting the discussion (AMF 4CT line 235).

Therefore, please find below a compromise proposal for paragraph 1. The reference to visibility is based on Art. 201(2)(h) of the Financial Regulation. The reference to the provision of information is based on Art. 53.3 of Regulation 514/2014

Compromise proposal:

The recipient of Union funding shall acknowledge the origin and ensure the visibility of the Union funding, in particular when promoting the actions and their results by providing coherent, effective, meaningful and proportionate information to multiple audiences, including the media and the public. **Visibility shall be ensured and information shall be provided except in duly justified cases where public display is not possible or appropriate or information is restricted by law in particular due to having due regard for the requirements of confidentiality, and reasons of security, public order, criminal investigations or in particular the protection of personal data.** To ensure the visibility of Union funding, recipients of Union funding should refer to its origin when communicating on the action and display the Union emblem.

Accompanying recital: When promoting the actions supported by this [Fund/Instrument], the recipients of Union funding should provide information in the languages relevant to the target audience. To ensure the visibility of Union funding, recipients of Union funding should refer to its origin when communicating on the action. To this end, recipients should ensure that all communications to the media and the public, display the Union emblem, and explicitly mention the Union's financial support."