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WORKING PAPER

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From:	Commission Services
To:	Ad Hoc Working Party on JHA Financial instruments
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Subject:	Fiche No. 5 - Follow-up to Questions raised by Member States on the Asylum and Migration Fund in the 2021-2027 Multiannual Financial Framework

In view of the meeting of the Ad Hoc Working Party on JHA Financial instruments (AMF) on 23-24 October 2018, delegations will find attached a working document from the Commission - Fiche No. 5 - Follow-up to Questions raised by Member States on the Asylum and Migration Fund in the 2021-2027 Multiannual Financial Framework.



EUROPEAN COMMISSION

**Ad-hoc Working Group on JHA
Financial Instruments
Fiche no. 5**

12 October 2018

WORKING DOCUMENT OF THE COMMISSION SERVICES

Subject: Follow-up to Questions raised by Member States on the Asylum and Migration Fund in the 2021-2027 Multiannual Financial Framework

This document presents the answers to written questions submitted until 13 September 2018 by Member States in response to the questionnaire sent by the Presidency in July 2018, in the context of the Ad-Hoc Working Group on the JHA Financial Instruments.

For the purpose of this overview, the submitted questions have been shortened and summarised by the Presidency wherever relevant in order to keep the length of this fiche reasonable. Answers have for the same reason been kept concise.

This document summarises or complements information already or yet to be provided in the context of the Ad-Hoc Working Group on the JHA Financial Instruments, without prevailing over such information.

Article 3

- Regarding (2)a: Are also the landing sites in third countries meant under the CEAS external dimension?

COM reply

- The Fund may support actions in relation to and in third countries, in line with the Union priorities in as long as they contribute to achieving the objectives of the Regulation. It is not clear what will be the actions covered under the landing sites in third countries. Depending on the type of action, some actions may be more naturally supported by the external instruments or by Asylum and Migration Fund or Border Management and Visa Instrument.

- 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?

COM reply

- Given that integration has a broad scope that covers both the third-country nationals' first steps into the hosting society as well as their permanent stay in the destination country, defining short-term or early integration as opposed to long-term integration would hinder the flexibility needed for the implementation of the relevant measures. Annex III 'Scope of support', although non-exhaustive, offers a good overview of actions that can be supported by the Fund in the area of integration. More details on the delineation between the Asylum and Migration Fund and ESF+ can be found in the MFF Fiche No. 23 of 9 July 2018 on the "Complementarities between the Asylum and Migration Fund, the Integrated Border Management Fund, the Internal Security Fund and other EU Funds in the 2021-2027 Multiannual Financial Framework".
- For those actions that are not listed in Annex III of the Asylum and Migration Fund proposal and as practical guiding criteria it can be said in accordance with Fiche No 23 that actions linked to supporting access to the labour market by a migrant should be financed by the ESF+ while actions focusing exclusively on third-country nationals should be financed under the Asylum and Migration Fund. Therefore, the actions linked to the labour market but not focusing exclusively on third-country nationals and that are not reflected in Annex III of the Asylum and Migration Fund proposal can be, as first resort, financed by the ESF+, but in case the funding in the relevant Operational Programme is not available, they can be supported under the Asylum and Migration Fund as long as they contribute to the objectives of the Fund. Furthermore, the decision which actions should be financed under the ESF+ or the Asylum and Migration Fund lies ultimately in the hands of the Member States' managing

authorities and should be established at the level of the Partnership Agreement and programming level.

- As regards the cooperation between the two Funds, the Commission proposal for the Common Provisions Regulation (CPR) as a common set of rules aims at facilitating the coordination and synergies between different Funds, especially as regards programming, implementation, monitoring and control. Overall, the complementarities between different Funds should be ensured at programming level (linking the needs of Member States to the EU Funds) and at the level of implementation in coordination between managing authorities (for instance through their participation in each other's monitoring committees, in line with Article 34 of the Common Provisions Regulation proposal, enabling better coordination between different authorities) and taking into account target groups, thematic dividing lines and budget availability.

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| <ul style="list-style-type: none">• Regarding (2)b: The provision should be compliant with the Preamble (13) and Annex II pt. 2b and should refer to early-stage integration. |
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COM reply

- The objective of the Fund under Article 3(2)(b) is to contribute to the integration of third-country nationals. However, the focus of the Fund is to achieve this objective by focusing on early integration *measures*.
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| <ul style="list-style-type: none">• Annex II, item 3 (b) mentions reducing incentives for irregular migration. Does it cover fighting irregular employment? |
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COM reply

- Annex III 'Scope of support' indicates lists of actions that the Fund shall in particular support. The list includes, among others, countering incentives for irregular migration, including the employment of irregular migrants (paragraph 4(d)).

Article 5

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| <ul style="list-style-type: none">• 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. |
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COM reply

- The proposal to associate third countries to the Fund is a horizontal proposal for all funding instruments on the participation of third countries in the 2021-2027 Multiannual Financial Framework. The Asylum and Migration Fund can be open to the participation of third countries. Such participation would be based on an

international agreement between the Union and the third country concerned, following the procedure described under Article 218 of the Treaty on the Functioning of the European Union.

- Participation in the Asylum and Migration Fund would give a third country full rights and obligations under the Fund, but could also lead to the participation of representatives of the associated country to the governance of the Fund, as well as a financial contribution to the Fund. For example, this is already the case in the current Instrument for financial support for external borders and visa¹, as part of the Internal Security Fund (ISF-Borders and Visa), where Switzerland, Norway, Liechtenstein and Iceland participate as associated countries.

Article 6

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| <ul style="list-style-type: none">• Upon which criteria a legal entity established in a third country may be eligible to the Fund? More clarification from the COM needed. |
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COM reply

- A legal entity established in a third country can be exceptionally eligible when this is necessary for the achievement of the objectives of this Regulation by a given action, when an entity is a member of a consortium composed of two or more entities or when an entity is part of the work programme of the thematic facility including emergency assistance and Union Actions.

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| <ul style="list-style-type: none">• 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? |
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COM reply

- Eligible entities are defined in Article 6 of the proposal for the Asylum and Migration Fund as regards the direct management of the Fund. Calls for proposals and subsequent grant agreements (on Union level) will further specify the eligibility rules for the implementing organisation, according to the nature of actions to be implemented (as it is the case in the current Asylum, Migration and Integration Fund²). In case the actions are implemented under shared management, applicable national rules will apply.

¹ Regulation (EU) No 515/2014 of the European Parliament and of the Council (OJ L 150, 20.5.2014, p. 143).

² Regulation (EU) No 516/2014 of the European Parliament and of the Council (OJ L 150, 20.5.2014, p. 168).

- 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?

COM reply

- In case of misuse of the Fund or when eligibility criteria are not fulfilled, the Managing Authorities and the Commission have the same recovery mechanisms at their disposal as in any other recoveries. The Commission, when it identifies any specific or systemic shortcomings that have a financial impact can issue recovery orders.
- In addition, in accordance with the Financial Regulation, any entity receiving Union funds is to cooperate fully in the protection of the Union's financial interests to grant the necessary rights and access to the Commission, OLAF and the European Court of Auditors and to ensure that any third parties involved in the implementation of Union funds grant equivalent rights.

Article 8

- Is the allocation for the technical assistance included in the sum of financial allocation or is counted on the top?

COM reply

- Technical assistance at the initiative of the Commission is a percentage of the total financial envelope of the Fund as defined in the Article 8(3) and is part of the financial envelope for the Thematic Facility (Article 9(1)).
- Technical assistance of Member States, on the other hand, is part of the allocation to the programme as defined in Articles 30-32 of the Common Provisions Regulation proposal. Article 30(1) of the Common Provisions Regulation defines the scope of technical assistance as *"actions [...] necessary for the effective administration and use of [the] Funds"*. The scope of technical assistance is not changed in substance compared to the 2014-2020 period. Technical assistance will be implemented through a flat rate financing based on progress in programme implementation.
- In the period 2014-2020, for AMIF and ISF, the technical assistance of Member States is composed of two elements; i.e. a fixed amount and percentage of the Member State allocation to the programme. For the 2021-2027 period it is proposed to simplify the structure of the technical assistance and calculate it as a percentage of the eligible expenditure included in each payment application submitted to the Commission. This modification facilitates the application of the reimbursement of technical assistance on a flat rate basis, which may contribute to the reduction of the administrative costs. The proposed percentage of the technical assistance is comparable with the current

figure at the level of the Fund. The level of technical assistance forms part of the allocation to the national programme of a Member State.

- As indicated in Article 32 of the Common Provisions Regulation proposal, for capacity building actions, Member State may undertake additional technical assistance implemented by financing not linked to costs.

- 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?

COM reply

- Please consult Ad-hoc Working Group on JHA Financial Instruments Fiche no. 1 on the Thematic Facility. The Thematic Facility will be implemented through work programmes on which Member States will be consulted.

Article 9

- Regarding Par. 7. Does it mean that the Commission may unilaterally amend MS's programs?

COM reply

- Commission does not intend to unilaterally amend Member States' programmes. The allocation of funding through the thematic facility will consist of two steps: first, the adoption of a work programme and, second, the amendment of Member States' programmes. However, Commission intends to introduce more efficient ways of revising Member States' programmes (for example to add top-up funding), but this will always happen with the Member States' approval.

- Can Specific Actions only be implemented through one MS?

COM reply

- Yes, Specific Actions are transnational or national projects in line with the objectives of the Fund for which one, several or all Member States may receive an additional allocation to their programmes (Article 15(1)). For more details, please consult Ad-hoc Working Group on JHA Financial Instruments Fiche no. 1 on the Thematic Facility.

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?

COM reply

- Any discrepancies identified between the different linguistic versions of the proposal will be addressed in the negotiation process.

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?

COM reply

- The resources reserved for the mid-term review (Article 11(1)(b)) will be allocated to the national programmes. In the exceptional case in which a Member State opts out from additional amounts, or in case of not fulfilling the condition in Article 14(2), the remaining funding will be channelled to the Thematic Facility and be used for targeted activities to cater to the specific needs of Member States, including through the top-ups of national programmes.
- As regards the allocation of funding in paragraph 1, this will be done through Commission implementing decisions amending the programmes of the Member States in accordance with the criteria as outlined in Annex I.

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?

COM reply

- Co-financing rates proposed for the emergency assistance and specific actions are continuation of the current practice. Regarding co-financing rate for the operating support, it aligned with the current practice ISF-Borders. Higher co-financing rate for actions listed in annex IV is intended to incentivise their take up while still requiring share of national co-financing.
- The National Programme will have to indicate the co-financing rate estimated per type of action: 75 % actions, 90 % actions, specific actions and Emergency Assistance Actions using the template provided in the Common Provisions Regulation annexes. Member States therefore, when programming, will need to anticipate for each specific

objective what will be the actions that will be implemented under each co-financing rate / modality. As the programme is prepared for 7 years, the distribution among the different actions can only be indicative.

- Paragraph 7 of Article 12 aims to ensure coherence with the proposal for the Common Provisions Regulation, regarding the financial management. According to Article 87.2 of the Common Provisions Regulation proposal, the Commission will reimburse as interim payments to Member States, the amounts resulting from applying the co-financing rate to the total eligible expenditure or to the public contribution included in a payment claim.

It is up to the Member State to decide in the programme which option it is choosing (total or public contribution). Public contribution covers EU contribution as well as national/regional/local public authorities contribution to the programme. Total contribution includes public and private contribution.

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?

COM reply

- When presenting their draft programmes, Member States can propose specific priorities that best fit their context and needs. It is not needed to address all of them with Union funding by definition. However, it is important that the Union funding is used to address those implementation measures outlined in Annex II which are relevant to the specific national context taking into account those actions which might not yet be adequately addressed on national level.

- 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.

COM reply

- Article 17(3)(a)(vii) of the proposal for the Common Provisions Regulation indicates that for the Asylum and Migration Fund the programme shall set out progress in implementing the relevant Union *acquis* and action plans. The programmes should therefore be drafted in accordance with Article 13 of the proposal on the Asylum and Migration Fund, focus on the implementing measures of Annex II, pay adequate attention to the actions eligible for higher co-financing in Annex IV and address the relevant recommendations in accordance with Article 13, paragraphs 4 and 6. Article 17(3)(4) of the Common Provisions Regulation proposal further presents the elements

that will form part of the programme, including a description of the initial situation, challenges and responses supported by the Fund. Agreeing on the content of the programme will be a joint exercise of the Commission, with assistance of the European Border and Coast Guard Agency and the European Union Agency for Asylum, and the Member State.

- How shall a MS consult the COM when planning to implement a project in a third country? Paragraphs 4, 5, 6 and 9 unclear.

COM reply

- The consultation is likely to take place through a standardised IT tool (e.g. SFC) in which a Member State can submit basic information on a project or a call for proposals, stating *inter alia* the region or third countries concerned, the objectives and the scope of the actions and the foreseen beneficiary.
- This consultation is envisaged to be informative and short, not adding to administrative burden for Member States, aimed at ensuring exchange of information and coherence on external actions supported by EU funding.

- 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?

COM reply

- Commission proposes to continue the practice of the current MFF, in which it consulted the FRONTEX Agency on draft programmes submitted by Member States. The proposed role in the implementation of the programme is in line with the enhanced role of the Agencies, in accordance with their strengthened mandates. Given the technical and country-specific expertise of the Union Agencies in the areas of migration and security, and in view of improving coordination and complementarities with the Agencies' areas of functioning, the Commission considers such consultations both beneficial and necessary for an adequate implementation of the Fund. This is also valid for the Agencies' role in monitoring and evaluation of the programmes.

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?

COM reply

- The total amount proposed by the Commission on 2 May 2018 to the Asylum and Migration Fund is EUR 10.415 billion. Ten percent (10%) of this total amount, meaning EUR 1.0415 billion is reserved for the mid-term review. This top-up amount is allocated between those Member States which have absorbed (submitted payment applications) at least 10% of their initial allocation (i.e. their allocation as part of 50% of EUR 10.415 billion as per Article 11(1)(a)). The distribution of EUR 1.0415 is proposed to be based on updated distribution criteria (indicated in Annex I) taking into account statistics from years 2021, 2022 and 2023.
- The top-up amounts of the mid-term review in 2024 will be available in 2025 and allocated to national programmes through Commission implementing decisions amending the programmes of the Member States. The amounts counted for Member States not fulfilling the 10% condition in Article 14(2), will flow back to the Thematic Facility. This will enable the Fund to use those amounts to support targeted Union priorities and needs.
- Based on the experience in implementing the current MFF 2014-2020, the Commission does not expect delays in the implementation of the national programmes in the MFF 2021-2027. The Commission considers that the 10% absorption (of the initial allocation that covers 50% of EUR 10.415 billion) after 4 years of implementation is reasonable and achievable. In addition, the 10% threshold aims to incentivise Member States to start implementation without delay.

Article 15

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| <ul style="list-style-type: none"> • Does par. 2 only refer to specific actions? |
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COM reply

- Yes, that is correct.

Further information on Specific Actions. Should they be implemented by a single Member State?

COM reply

- See the reply to a similar question posed in the context of Article 9.

Article 16

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| <ul style="list-style-type: none"> • 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 a MS were to resettle 100 persons, that MS would receive € 1 million and according to paragraph 1 that MS would have the freedom to spend this on each of the objectives. However, why then can the MS not use the money to co-fund other priorities of the Fund? |
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- Does par. 2 mean that the amount may be allocated only if the person was ALREADY effectively allocated (i.e. before the amendment)?

COM reply

- The Commission proposal for the Asylum and Migration Fund reflects the state of negotiations on the Union Resettlement [and Humanitarian Admission] Framework at the time of the adoption of the proposal. Taking into account that these negotiations are still ongoing, questions regarding the Union Resettlement [and Humanitarian Admission] Framework should be addressed in the framework of those negotiations.

In general, the contribution made by a Member State as co-financing rate is to ensure that there is ownership by Member States in the implementation of the action and in order to increase the overall amount of actions to be supported and therefore other Union funding cannot be used for this aim.

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)?

COM reply

- The Commission proposal for the Asylum and Migration Fund reflects the state of negotiations on the recast Dublin Regulation at the time of the adoption of the proposal. Taking into account that these negotiations are still ongoing, questions regarding the recast Dublin Regulation should be addressed within the framework of these negotiations.

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”.

COM reply

- As regards 'public authorities responsible for accomplishing the tasks and services which constitute a public service for the Union' mentioned in Article 18, this wording refers to public authorities implementing the Union *acquis* on asylum and/or return and with that constitute a public service for the Union as a whole.

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| <ul style="list-style-type: none"> • Why is it necessary to justify operating support in each annual performance report? |
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COM reply

- It is difficult to foresee at the stage of programming the use of operating support for the entire programming period. That is why the Commission considers it necessary to indicate in annual performance reports why a Member State deemed the use of operating support as essential for maintaining an adequate level of its asylum and return systems.

Article 20

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| <ul style="list-style-type: none"> • 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)? |
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COM reply

- In order to streamline the text, the concepts that are mentioned only once in the text of the Regulation, such as Union actions, are defined in the relevant Article.
- Paragraph 3 is a standard provision listing the forms of funding covered by the Financial Regulation.
- Article 2(29) of the Financial Regulation³ defines a ‘financial instrument’ as a Union measure of financial support provided from the budget to address one or more specific policy objectives of the Union which may take the form of equity or quasi-equity investments, loans or guarantees, or other risk-sharing instruments, and which may, where appropriate, be combined with other forms of financial support or with funds under shared management or funds of the European Development Fund (EDF).
- Blending is defined as actions combining non-reimbursable forms of support (e.g. grants) with financial instruments.

³ Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council (OJ L 193, 30.7.2018, p. 1).

- Article 22 is broader than Article 20(3) as it refers to the proposal for the InvestEU Regulation that brings together various financial instruments funded by the Union.
- Blending is a possibility that the Commission considers opportune to open to shared and direct management. The Commission may propose the creation of a Union Action that would be supported by grant funding and credit/guarantee/interest subsidy from a bank, principally to finance investments in infrastructures or IT systems.

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?

COM reply

- The core performance indicators may only be changed in exceptional cases, should Member States and the Commission during implementation of the Fund find that, as a result of their feasibility, relevance and functionality, such indicators need to be refined. If indicators are revised during the programming period it is clear that there is risk that data is not complete/available from the on-set. The Commission accepts this and agrees this should only occur in exceptional cases. The Commission considers that the core performance indicators that are included in the proposal are complete. Nevertheless, the Commission considers that the Regulation should foresee a possibility to do so.

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 (...)?"

COM reply

- The empowerment for the Commission to adopt delegated acts to amend the types of interventions is limited to addressing unforeseen or new circumstances or to ensure the effective implementation of the funding. For example, when a new action is allowed under the Fund that is not covered by Annex VI. To ensure consistency of reporting, all activities need to be covered by types of intervention.
- Article 31(1) refers to Title IV of the Common Provisions Regulation proposal and Annex VI 'Types of intervention', not to Annex IV 'Actions eligible for higher co-financing in line with Articles 12(2) and 13(7)' of the Asylum and Migration Fund Regulation.

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?

COM reply

- Article 34(2) indicates that the financial envelope of the Fund may also cover technical assistance and administrative expenses necessary to ensure the transition between the Fund and the measures adopted under the Asylum, Migration and Integration Fund.

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.

COM reply

- The Commission proposal does not introduce minimum percentages for the specific objectives implemented by the national programmes. The weighting is proposed only for the distribution key to be used for the allocation, based on which the available resources will be divided between the Member States.

- 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.

COM reply

- For the initial allocations, the Commission proposal for the distribution key takes into account the data available for the latest three reference years preceding the start of the programming period in order to ensure that the distribution of funding better reflects the real-time needs of Member States related to migration at the start of the programming period. Additional funding will be distributed during the mid-term review, taking into account the data for latest three years available preceding the mid-term review (e.g. 2021, 2022 and 2023) and consequently specific needs of Member States at that time. This will not only enable a distribution of funding according to the needs of Member States but will *de facto* reflect the situation in Member States over a

period of six calendar years, reflecting more accurately the needs of Member States throughout the programming period.

- Using 2014-2020 as a reference period would include data that is relatively far from the actual needs at the start of the programming period for the 2021-2027 programming period. The interim evaluation of the Asylum, Migration and Integration Fund has shown that using statistical data from 2009 onwards for determining the distribution of funding for the 2014-2020 programming period has not reflected the actual needs of Member States during the first years of implementation.

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| <ul style="list-style-type: none">• Could the COM please explain why the persons being resettled are considered separately from the total number of persons granted international protection? |
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COM reply

- Resettlement provides legal and safe pathways to enter the EU to the persons in need of protection. Whilst the decision to take part in resettlement lies with the Member States, the Commission is providing a joint framework and financial support to increase the Union's collective resettlement efforts and has therefore proposed to acknowledge these efforts separately from the total number of persons granted international protection in Annex I of the proposal.

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| <ul style="list-style-type: none">• Annex I p(3)(c) – Why do the calculations exclude the persons arrived under the Mobility and Researchers Directive? |
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COM reply

- In principle, persons coming to the EU for research and study do not require integration support to the same extent as other categories of legally staying third-country nationals, given that their stay in the Union is of temporary nature. Therefore, this category is excluded from the calculation for determining the allocations for Member States. Such target groups may nevertheless benefit from the actions implemented with the help of the Fund.

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| <ul style="list-style-type: none">• 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? |
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COM reply

- Criteria proposed in the distribution key is based on the Eurostat data for a given year reported by the Member States. The data shows the effective resettlements and not the numbers of persons that Member States have pledged to resettle.

- 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.

COM reply

- Please see the reply above to the first question related to Annex I.

- 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.

COM reply

- Third country nationals being issued a work-related first residence permits valid for less than 12 months are not included in the distribution key for the calculation of the national allocations. The reasoning for excluding this category of persons is due to the fact that persons who come to a Member State for work related reasons already have a job when they come to the Union. In case their stay is of temporary nature (less than 12 months), integration measures are not necessary to the same extent as for other categories of legally staying third-country nationals. However, this category could still benefit from integration measures supported by the Fund.

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?

COM reply

- By not including minimum percentages for specific objectives, the flexibility for managing the national programmes is increased compared to the 2014-2020 programming period. The method of establishing and managing the national programmes is outlined in Article 13 ('Programmes') of the Asylum and Migration Fund proposal, which includes that *'[e]ach Member State shall ensure that the priorities addressed in its programme are consistent with, and respond to, the Union priorities and challenges in the area of migration management and are fully in line with the relevant Union acquis and agreed Union priorities'*.

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?

COM reply

- Yes, to the extent that IT systems contribute to the objectives of the Fund they can be supported, through 1(b) and (c).

- 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?

COM reply

- 2(b) '*conducting asylum procedures*' covers actions that support Member States in their capacity to conduct asylum procedures (i.e. staff, operational needs) to ensure compliance with the asylum *acquis*.

- 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)?

COM reply

- Yes, the scope of support covers the examples of actions that are listed and is similar compared to the Asylum, Migration and Integration Fund. Example of action 1(e) applies to the three specific objectives.

- 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?

COM reply

- The example of action 3(a) is related to legal migration towards Member States. Example of actions 3(j) and (k) cover (interaction with) the host society in Member States to contribute to the integration of third-country nationals.

- 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?

COM reply

- For the complementarities between the Asylum and Migration Fund, the Integrated Border Management Fund, the Internal Security Fund and other EU Funds in the

2021-2027 Multiannual Financial Framework, please refer to MFF Fiche No 23. For 3(b) and 4(d) of Annex III the same approach towards complementarity, as outlined in Fiche No 23, applies. In principle, it is not foreseen that the European Social Fund Plus would support such activities.

- Pt. 3g.: We would like to know which actions are eligible to be financed under the AMF, ESF+ and ERDF?

COM reply

- For the complementarities between the Asylum and Migration Fund, the Integrated Border Management Fund, the Internal Security Fund and other EU Funds in the 2021-2027 Multiannual Financial Framework, please refer to MFF Fiche No 23.

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 cofunding percentages of already started actions?

COM reply

- In order to cater for changing needs during the programming period, the Commission proposes the possibility to amend Annex IV via a delegated act. Should there be a need to amend Annex IV, it is the intention of the Commission to amend or add actions eligible for higher co-financing, not to remove actions from Annex IV. Any action of which the implementation would have already started and which would be affected by an amendment would, in principle, remain eligible for the higher co-financing rate. Should such situation occur, the Commission would invite the Member State concerned to discuss such matter in detail in the framework of implementing the national programme.

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?

COM reply

- This core performance indicator measures the pressures on the reception capacity of Member States to accommodate asylum applicants and efficiency of their asylum systems to process asylum applications expressed through a ratio of the number of persons in the reception system as compared to the total number of asylum applicants.

- 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?

COM reply

- This core performance indicator relates to the general number of returns in a Member State.

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?

COM reply

- The Asylum and Migration Fund proposal includes ‘resettlement’ in Annex VI. Any potential amendments should reflect the negotiations regarding the Union Resettlement [and Humanitarian Admission] Framework.

- 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?

COM reply

- The codes included in Annex VI present special needs through using multiple types of codes. For the Common European Asylum System, ‘children in migration’ may cover victims of trafficking in human beings. The codes that have been proposed are based on the experience in implementing the Asylum, Migration and Integration Fund and the related reporting needs for particular Union priorities.

- Table 1 of the Annex VI: Will it be possible to mix several types of intervention in one action / project?

COM reply

- It is foreseen that, in principle, one code should be selected per action / project from table 1, 2 and 3. If a project falls under several codes, the managing authority should choose the most relevant code for a specific project. Alternatively, the managing authority may decide to allocate the project proportionally to different codes in the same table.

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?

COM reply

- Yes, it is possible to cover the maintenance costs of IT systems that contribute to the objectives of the Asylum and Migration Fund through operating support.

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?

COM reply

- Yes, indicator 2(3)(b) measures the number of persons that participated in preparatory actions to facilitate integration in the labour market that are supported through the Asylum and Migration Fund, complementary to support through the European Social Fund Plus. For the complementarities between the Asylum and Migration Fund, the Integrated Border Management Fund, the Internal Security Fund and other EU Funds in the 2021-2027 Multiannual Financial Framework, please refer to MFF Fiche No 23.

- 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))?

COM reply

- Please see previous reply. For the complementarities between the Asylum and Migration Fund, the Integrated Border Management Fund, the Internal Security Fund and other EU Funds in the 2021-2027 Multiannual Financial Framework, please refer to MFF Fiche No 23.