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WORKING PAPER

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From:	Presidency
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Subject:	Proposal for a Regulation of the European Parliament and of the Council establishing the Asylum and Migration Fund – Presidency compromise proposal on Annex I

Following the JHA Counsellors meeting on 24 October 2019, please find in the annex to this note, comments from delegations on the Presidency compromise proposal on Annex I to the above mentioned proposal (12658/19).

Proposal for a
REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
establishing the Asylum and Migration Fund

Comments on the Presidency compromise proposal on Annex I

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BELGIUM:

Regarding the Annex I, we took note of the French proposal to further amend the weighting of the criteria and sub criteria. Belgium can show openness towards that proposal if this can help the Presidency to find an overall compromise within the Council on the Annex I. We take a constructive stance on this, as our major concern is to move on quickly with this file. If a majority can adhere to the French proposal, we will not oppose it.

FRANCE:

- **Période de référence (paragraphe 5)**

La France soutient la proposition initiale de la Commission. L'efficacité du fonds à remplir ses objectifs sera d'autant plus importante que sa répartition sera proche de la réalité migratoire dans l'Union européenne. Bien que la crise migratoire ait eu un effet important et de moyen terme sur nos systèmes, la future politique migratoire de l'Union doit se construire à l'aune de notre contexte migratoire actuel.

Ainsi, la période de référence des données statistiques utilisées pour la répartition des enveloppes doit être la plus proche possible du début du prochain cadre et de la révision à mi-parcours, soit à **chaque fois les 3 dernières années disponibles**. Nous ne saurions accepter de période de référence plus étendue, ni surtout plus ancienne.

A cet égard, nous sommes attachés à la mention des « trois années précédentes » et aux « données statistiques annuelles les plus récentes », davantage que des années établies de manière fixe.

- **Sous-critères sur la migration irrégulière (paragraphe 4)**

La France tient à rappeler que l'émission d'une décision d'éloignement reste le meilleur indicateur de la situation d'un Etat membre quant au nombre de personnes en situation irrégulière, dont l'éloignement effectif doit faire l'objet d'un soutien financier.

La France appelle de ses vœux la Présidence à reconnaître cette réalité opérationnelle et ajuster la pondération des sous-critères en conséquence.

Proposition de rédaction:

4. The following criteria in the area of countering irregular migration including returns will be taken into account and shall be weighted as follows:

(a) ~~50~~ **75** % in proportion to the number of third-country nationals who do not or no longer fulfil the conditions for entry and stay in the territory of the Member State and who are subject to a return decision under national and / or Community law, i.e. an administrative or judicial decision or act, stating or declaring the illegality of stay and imposing an obligation to return;

(b) ~~50~~ **25** % in proportion to the number of third-country nationals who have actually left the territory of the Member State following an administrative or judicial order to leave, whether undertaken voluntarily or under coercion.

- **Sous-critères sur l’asile (paragraphe 2)**

Compte tenu de l’évolution du contexte international, il est nécessaire de valoriser les efforts consentis par les États membres en faveur des politiques garantissant une voie d’accès légale et sûre à la protection internationale comme la réinstallation.

Il nous semble à cet égard nécessaire de **réhausser le sous-critère relatif à la réinstallation**. En plus d’être intrinsèquement plus coûteuses, les procédures de réinstallation permettent un accès ordonné, digne et sûr aux personnes en besoin de protection par l’Union européenne, et doivent bénéficier de financements plus importants.

Proposition de rédaction:

2. The following criteria in the area of asylum will be taken into account and shall be weighted as follows:

- (a) ~~30~~ **20** % in proportion to the number of persons who fall into one of the following categories:
- (b) ~~60~~ **50** % in proportion to the number of third-country nationals or stateless persons who have applied for international protection.
- (c) ~~40~~ **30** % in proportion to the number of third-country nationals or stateless persons who are being or have been resettled in a Member State.

- **Sous-critères sur la migration légale (paragraphe 3)**

Il est nécessaire de pouvoir favoriser un **critère portant, de façon plus large, sur l’ensemble des personnes résidant dans les États membres, plus que sur le primo-arrivant**.

En effet, cette répartition couvre mieux les besoins relatifs à l’objectif spécifique de migration légale et d’intégration - notamment de moyen terme – qui sont plus directement corrélés à l’ensemble des personnes bénéficiant d’un titre de séjour. La première catégorie présente de plus l’avantage d’inclure également les primo-arrivants.

Proposition de rédaction:

3. The following criteria in the area of legal migration and integration will be taken into account and shall be weighted as follows:

- (a) ~~40~~ **60** % in proportion to the total number of legally residing third-country nationals in a Member State.
- (b) ~~60~~ **40** % in proportion to the number of third-country nationals who have obtained a first residence permit.

- **Pondération des critères (paragraphe 1.b)**

La France estime que la **pondération des différents critères devrait être plus adaptée aux charges résultant de la situation migratoire la plus récente**, notamment compte tenu des efforts déployés par les Etats-membres.

Lors de la crise migratoire récente et avec l'émergence d'une importante part relevant de mouvements secondaires, la charge de la demande d'asile est devenue prépondérante pour les systèmes nationaux et doit donc avoir une place centrale dans la clé de répartition.

Proposition de rédaction:

(b) The remaining resources referred to in Article 11 shall be distributed based on the following criteria:

- ~~30~~ **40** % for asylum;
- 30 % for legal migration and integration;
- ~~40~~ **30** % for countering irregular migration including returns.

- **Part fixe (paragraphe 1.a)**

La France soutient pleinement la proposition de la Commission et **s'oppose à toute augmentation de la part fixe**. En effet, la France défend la souplesse et l'adaptabilité du fonds. Les problématiques migratoires touchent de façon différente les États membres et selon des temporalités différentes. Ainsi, pour remplir au mieux les objectifs fixés, l'allocation initiale du fonds ne doit pas préempter sur les besoins spécifiques et évolutifs des États membres ni confisquer des fonds à ceux qui sont les plus touchés.

HUNGARY:

1. [The available resources referred to in Article 11 shall be broken down between the Member States as follows:
 - (a) Each Member State shall receive a fixed amount of EUR ~~7 500 000~~ **10 000 000** ~~5 000 000~~ from the Fund at the start of the programming period only;

HU: It is a horizontal request of Hungary regarding all the three JHA Funds.

- (b) The remaining resources referred to in Article 11 shall be distributed based on the following criteria:
 - ~~30~~ **35** ~~30~~% for asylum;
 - 30 % for legal migration and integration;
 - ~~40~~ **35** ~~40~~ % for countering irregular migration including returns.

HU: We find the weighting in the original Commission proposal more suitable.

2. The following criteria in the area of asylum will be taken into account and shall be weighted as follows:
 - (a) 30 % in proportion to the number of persons who fall into one of the following categories:
 - Any third-country national or stateless person having been granted the status defined by the Geneva Convention;
 - Any third-country national or stateless person enjoying a form of subsidiary protection with the meaning of recast Directive 2011/95/EU¹;
 - Any third-country national or stateless person enjoying temporary protection within the meaning of Directive 2001/55/EC²
 - (b) ~~70~~ **60** % in proportion to the number of third-country nationals or stateless persons who have applied for international protection.
 - (c) ~~10 % in proportion to the number of third-country nationals or stateless persons who are being or have been resettled in a Member State.~~

HU: As those resettled receive international protection status, they are already covered by point (a) and so there is no need to provide additional weighing based on resettlement.

¹ Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (OJ L 337, 20.12.2011, p. 9–26).

² Data to be taken into account only in case of the activation of the Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof (OJ L 212, 7.8.2001, p. 12–23).

3. The following criteria in the area of legal migration and integration will be taken into account and shall be weighted as follows:
- (a) 40 % in proportion to the total number of legally residing third-country nationals in a Member State.
 - (b) 60 % in proportion to the number of third-country nationals who have obtained a first residence permit.
 - (c) However, for the purpose of the calculation referred to in paragraph 3(b), the following categories of persons shall not be included:
 - Third country nationals being issued a work-related first residence permits valid for less than 12 months;
 - Third-country nationals admitted for the purposes of studies, pupil exchange, unremunerated training or voluntary service in accordance with Council Directive 2004/114/EC³ or when applicable the Directive (EU) 2016/801⁴ **being issued a first residence permit valid for less than 12 months;**
 - Third-country nationals admitted for purposes of scientific research in accordance with Council Directive 2005/71/EC⁵ or when applicable the Directive (EU) 2016/801 **being issued a first residence permit valid for less than 12 months.**

HU: We would like to restrict the excluded categories of students and researchers to those arriving for less than 12 months similarly to the work-related resident permits. EU acquis in this area, namely Directive (EU) 2016/801 allows a longer period of stay and encourages the extension of stay even after the studies or reasearch is finished; and therefore not all students and researchers should be regarded as arriving for a short-term period.

³ Council Directive 2004/114/EC of 13 December 2004 on the conditions of admission of third-country nationals for the purposes of studies, pupil exchange, unremunerated training or voluntary service (OJ L 375, 23.12.2004, p. 12–18).

⁴ Directive (EU) 2016/801 of the European Parliament and of the Council of 11 May 2016 on the conditions of entry and residence of third-country nationals for the purposes of research, studies, training, voluntary service, pupil exchange schemes or educational projects and au pairing (OJ L 132, 21.5.2016, p. 21–57).

⁵ Council Directive 2005/71/EC of 12 October 2005 on a specific procedure for admitting third-country nationals for the purposes of scientific research (OJ L 289, 3.11.2005, p. 15–22).

4. The following criteria in the area of countering irregular migration including returns will be taken into account and shall be weighted as follows:

- (a) ~~60~~50% in proportion to the number of third-country nationals who do not or no longer fulfil the conditions for entry and stay in the territory of the Member State and who are subject to a return decision under national and / or Community law, i.e. an administrative or judicial decision or act, stating or declaring the illegality of stay and imposing an obligation to return;
- (b) ~~40~~50% in proportion to the number of third-country nationals who have actually left the territory of the Member State following an administrative or judicial order to leave, whether undertaken voluntarily or under coercion.

HU: As the actual implementation of a return decision is dependent upon various factors and many times such factors cannot be influenced by the Member State, it would be disadvantageous to set out a 50% weighing based on this category, it is therefore suggested to be lowered to 40%.

- 5. For initial allocation the reference figures shall be **based on** the ~~latest~~ annual statistical data produced by the Commission (Eurostat) covering the ~~preceding three calendar~~ years **2017, 2018 and 2019** on the basis of data provided by Member States on the date of the applicability of this Regulation in accordance with Union law. For the mid-term review, the reference figures shall be **based on** the ~~latest~~ annual statistical data produced by the Commission (Eurostat) covering the ~~preceding three calendar~~ years **2021, 2022 and 2023 prior to the mid-term review in 2024** available ~~at the time of the mid-term review in 2024~~ on the basis of data provided by Member States in accordance with Union law. Where Member States have not supplied the Commission (Eurostat) with the statistics concerned, they shall provide provisional data as soon as possible.
- 6. Before accepting these data as reference figures, the Commission (Eurostat) shall evaluate the quality, comparability and completeness of the statistical information in accordance with normal operational procedures. At the request of the Commission (Eurostat), Member States shall provide it with all the necessary information to do so.]

ITALY:

Further to the meeting of the JHA Counsellors on the Home Affairs financial instruments on October 24, IT would like to confirm the Italian position on Annex 1.

We support the whole French proposal which is deemed to better caters for the Italian concerns and interests.

Alternatively, we can be flexible on the weighing of the criteria as proposed by the PCY (35-30-35) and the weighing 60-40 of the subcriteria concerning illegal migration (point 4 of Annex 1) (as previously proposed by Italy). As for the remaining subcriteria in point 2 and 3 of Annex 1 we have a strong preference for those proposed by FR.

LUXEMBOURG:

First, the fixed amount the Member States receive irrespective of the other allocation criteria was proposed to increase from **EUR 5 million to EUR 7,5 million** in order to provide sufficient finances for all Member States. The proposed increase has no impact whatsoever on the overall amount for the AMF, which is to be agreed as part of the MFF negotiations.

LU:supports

Secondly, regarding the weightings of the objective criteria, the Presidency proposed the weighting for the **asylum criteria to be increased from 30% to 35%** and the weighting for countering irregular migration including returns to be decreased from 40% to 35% respectively. The weighting for legal migration and integration remains at 30%.

LU: LU supports the Presidency's compromise. With regards to the FR proposal, we can support the 75/25 within irregular migration including return; and can accept the suggested 20/50/30 within asylum. Flexible on these two.

Thirdly, the Presidency proposed to use calendar years **2017, 2018 and 2019 for the initial allocation of funding and years 2021, 2022 and 2023 for the adjustment at mid-term instead of the latest three calendar years proposed by the Commission.** The approach taken by the Presidency intends to increase predictability and certainty regarding the reference years and is in line with the changes made in other JHA Fund proposals.

LU: Full support for using the most recent data

On AMF interinstitutional negotiations, the Presidency will debrief the Member States about the discussion held with the European Parliament at the first technical trilogue. The discussion focused on articles 1-13, excluding the parts where the Council doesn't have a mandate. The discussion was conducted on the basis of the four-column table where the corresponding lines are 73-168.

LU: General remark: we are strongly in favour of keeping all workload within boundaries that are realistic&achievable, especially for smaller countries

THE NETHERLANDS:

Annexes: A lot of changes have been made in the Annexes. Unclear what the consequences are. Scrutiny reservation.



SPAIN:

As per Annex I, Spain proposes the following distribution of criteria and subcriteria:

- 30% for asylum: 20% - 50% - 30%
- 40% for legal migration and integration : 60% - 40%
- 30% for countering irregular migration including returns : 75% - 25%

Please also prepare to comment on the following aspects:

- **proceedings regarding the preparation of the National Programmes,**

Spain's position on this matter is based on the need to stress Fund flexibility and dynamism; hence, avoiding additional or new administrative burdens or equivalents that may imply delays in National Programmes implementation and of its associated activities. In this regard, obligations to inform periodically the Commission and (foreseeably according to its position) EP should be reduced to an annual basis. Furthermore, Spain upholds the establishment of minimum allocation thresholds to the different specific objectives within the National Programmes.

Spain has consistently defended the deletion of “legally staying” when references are made to “integration of legally staying third country nationals” and we still hold this stance.

- **co-operation with third countries**

The new MFF has to provide a sufficiently endowed financing to key third countries in order to attend their main needs related to migration and asylum. That is, especially, the case of those third countries of origin or transit that have experimented an increase of their need on these fields due to migratory pressure, which is far from declining. Hence, EU support to third countries requires stable funding in order to keep on building on their capacities, particularly in equipment.

Thus, the future MFF has to assure a sufficient EU funding to finance the actions in key third countries to cover efficiently and in a flexible way their needs. For all these reasons, Spain welcomes the inclusion of the external dimension in AMF in line with European Council Conclusions on June 28th, 2018. Nowadays, reality reveals the need to increase the financial support of the funds dedicated to develop Home actions in third countries as the major challenges we face in the field of asylum and migration require actions beyond our borders. In relation to it, the Kingdom of Spain welcomes also the inclusion of a significant component in the agreed Council position to finance actions for the external dimension. In relation to the concrete numbers, Spain is of the opinion that a minimum threshold could be accepted over the period 2021-2027 in the thematic facility, while allowing MS without constraints to decide allocations to third countries.

- **solidarity**

The Kingdom of Spain confines the terms “solidarity” to what will be agreed on its definition on the next Dublin regulation. Furthermore, from a Spanish point of view, we would rather prefer starting by agreeing on the definitions of “solidarity” and “responsibility” on the future Dublin Regulation before dealing with it on a sectorial regulation such it is the case on AMF.