



Council of the European Union
General Secretariat

**Interinstitutional files:
2018/0248(COD)**

Brussels, 08 March 2019

WK 2281/2019 INIT

LIMITE

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WORKING PAPER

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WORKING DOCUMENT

From:	Presidency
To:	Ad Hoc Working Party on JHA Financial instruments
N° prev. doc.:	WK 930 2019 INIT
Subject:	Proposal for a Regulation of the European Parliament and of the Council establishing the Asylum and Migration Fund

Delegations will find enclosed a compilation of comments from Member States on the Asylum and Migration Fund.

Proposal for a Regulation Establishing the Asylum, Migration and Integration Fund
(Compilation of comments following the Working Party meeting on 29.01.2019)

2018/0248 (COD)

GENERAL COMMENTS

CZ: (Comments):

Recital 13 should be deleted and replaced by the recital which is now in footnote no. 17 and 18

CZ: (Comments):

Similarly to the ESF+ proposal regulation it should be considered that some indicators might be based on informed estimates (see e.g. Annex I of ESF+ proposal indicator 1b).

There should be an interconnection with GDPR. It must be clearly stated that the beneficiaries are entitled to collect personal information of supported persons and it should be defined which (as it is presumed by Paragraph 3, Article 6, Regulation 2016/679)

HR: (Comments):

General comments on the Proposal for a Regulation Establishing the Asylum, Migration and Integration Fund:

HR generally supports the new Proposal for a Regulation Establishing the Asylum, Migration and Integration Fund, which contributes to a more stable migration policy, taking into consideration the existing trends and needs of Member States.

We support a more fair sharing of responsibility among Member States, especially the flexibility in the re-allocation of resources under the Fund.

We cannot support setting aside resources under AMF, BMVI and ISF for the management of the external dimensions of migration. HR supports the increase of the operating support rate from 10 to 20%.

We also believe that the criteria (percentages) for allocation of funds must reflect the actual burden taken on by the Member States.

LV: (Comments):

In general Latvia supports the Romanian compromise proposal for the Asylum, migration and integration fund (further – the Fund). Latvia supports deletion of external dimension aspects from the Fund's objectives, measures and indicator/output sections. However, Latvia can agree upon the formulation under the Article 8, paragraph 2a only in the case if the dedicated component for external dimension is financed exclusively from the thematic component, does not affect the budget allocated to the National programmes and is based on voluntary principle.

PT: (Comments):

The Romanian Presidency has circulated a first compromise proposal on the Asylum and Migration Fund – document 930/2019.

This compromise proposal provides for minor, but extremely relevant, adjustments to the initial proposal circulated by the European Commission – doc. COM(2018) 471final.

A vast majority of these adjustments take into account the content of the discussions held on the Ad Hoc Working Party on JHA Instruments / MFF 2021-2027, as well as the written comments therein circulated by the Member States.

Portugal would, in this context, like to start by emphasising our **firm support to this first compromise proposal circulated by the Presidency**, taking this opportunity to underline, and to thank, the commitment and engagement of the Romanian Colleagues on further advancing with the negotiations, in view of its possible conclusion during the first semester of 2019.

In this context, and without prejudice to the a.m. support to the overall changes and adjustments proposed by the Presidency, Portugal takes the opportunity, set during the last ADWP of the 29th of January, and, within the set deadline, hereby addresses a **small number of points which Portugal considers could still be improved in the final Council's compromise proposal for the AMIF**.

DRAFTING SUGGESTIONS / COMMENTS

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

AT: (Comments):

General remark on external dimension: The Council Decision of June 2018 clearly states that the Home Funds should hold a significant component for the external migration management.

In general, in AT's opinion, all aspects concerning migration should be funded under the AMIF. AT also thinks that the funding of the external dimension will be essential for preventing uncontrolled migration flows in the future.

We know that another idea is, that external instruments like NDICI should mainly be responsible for funding the external dimension, but we have the opinion that the Home Funds and especially the AMF should be able to fund the external dimension in the framework of migration – let migration experts deal with the topic.

The complementarity with the external instruments for example with the NDICI is not clear yet. Yes, it is mentionend that the NDICI reserves 10% of the financial envelope to address the root causes of irregular migration and forced displacement and to support migration management, **but it is only mentionend in the recitals (30) and not under the budgetary articles.**

It is the wish of the European leaders that the external dimension is funded under the Home Funds, a considerable additional amount should be given to the AMIF.

For example, if measures in countries of origin can be supported and perspectives can be created there, irregular migration to Europe would be easier to prevent and handle.

establishing the Asylum, ~~and~~ *Migration and Integration* Fund

BG: (Comments):

We support the suggested modification.

CZ: (Comments):

The CZ supports this change.

EE: (Comments):

EE welcomes that „integration“ is brought back to the name of the fund.

EL: (Comments):

We welcome the inclusion of the term 'Integration' in the Fund title.

FR: (Comments):

We support this modification.

IT: (Comments):

support
THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,
Having regard to the Treaty on the Functioning of the European Union, and in particular Article 78(2) and Article 79(2) and (4) thereof,
Having regard to the proposal from the European Commission,
After transmission of the draft legislative act to the national parliaments,
Having regard to the opinion of the European Economic and Social Committee ¹ ,
Having regard to the opinion of the Committee of the Regions ² ,
Acting in accordance with the ordinary legislative procedure,
HAVE ADOPTED THIS REGULATION:
CHAPTER I
GENERAL PROVISIONS

¹ OJ C , , p. .

² OJ C , , p. .

Article 1
Subject matter
1. This Regulation establishes the Asylum, and Migration <i>and Integration</i> Fund ('the Fund'). AT: (Comments): AT is in favour of putting "integration" back in the fund's name. BG: (Comments): We support the suggested modification. DE: (Comments): We welcome the Presidency's proposal to change the name of the fund from AMF to AMIF. In some places, however, this still needs to be reflected in the text. Furthermore, it still needs to be clarified what measures can be financed under AMIF in comparison to ESF+. EE: (Comments): EE welcomes that „integration“ is brought back to the name of the fund. FR: (Comments): We support this modification. PT: (Comments): Portugal supports the re-inclusion of the Integration on the formal designation of the Fund.
2. This Regulation lays down the objectives of the Fund, the budget for the period from 2021 to 2027, the forms of Union funding and the rules for providing such funding.

Article 2

Definitions

FR: (Comments):

Courtesy translation :

It would be relevant to ensure that - without prejudice to ongoing negotiations - the arrangements that can be set up in border procedures can benefit from financial support of the Fund, and the appropriate definitions should be included in this perspective.

For the purpose of this Regulation, the following definitions shall apply:

(a) 'applicant for international protection' means an applicant as defined in point [x] of Article 2 of Regulation (EU) ... [Asylum Procedure Regulation]³;

(b) 'beneficiary of international protection' within the meaning of point (2) of Article [2] of Regulation (EU) ... [Qualification Regulation]⁴;

(c) 'blending operation' means actions supported by the Union budget, including within blending facilities as defined in point (6) of Article 2 of ***Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council⁵*** ~~the Financial Regulation,~~ combining non-repayable forms of support or financial instruments from the Union budget with repayable forms of support from development or other public finance institutions, as well as from commercial finance institutions and investors;

³ OJ C , , p. .

⁴ OJ C , , p. .

⁵ ***Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012 (OJ L 193, 30.7.2018, p. 1).***

(d) 'family member' means any third-country national as defined under the Union law relevant to the policy area of action supported under the Fund;
(e) 'humanitarian admission' within the meaning of Article [2] of Regulation (EU) ... [Union Resettlement [and Humanitarian Admission] Framework] ⁶ ;
(f) 'removal' means 'removal' as defined in point (5) of Article 3 of Directive 2008/115/EC;
(g) 'resettlement' means 'resettlement' as defined in Article [2] of Regulation (EU) ... [Union Resettlement [and Humanitarian Admission] Framework];
(h) 'return' means 'return' as defined in point (3) of Article 3 of Directive 2008/115/EC;
(i) 'third-country national' means any person who is not a citizen of the Union as defined in Article 20(1) of the TFEU. Reference to third-country nationals shall be understood to include stateless persons and persons with undetermined nationality;
NL: (Drafting): (i) 'third-country national' means any person who is not a citizen of the Union as defined in Article 20(1) of the TFEU, <u>whereby special attention shall be paid to those who enjoy refugee status or subsidiary protection within the meaning of Directive 2011/95/EU</u> . Reference to third-country nationals shall be understood to include stateless persons and persons with undetermined nationality;
NL: (Comments): Definition brought in line with the NL suggestion for the definition for TCN under ESF+.

⁶ OJ C , , p. .

(j) 'vulnerable person' means any person as defined under the Union law relevant to the policy area of action supported under the Fund. ⁷

CZ: (Drafting):

k) "effectively resettled"

CZ: (Comments):

Based on the experience from the current programming period the CZ suggests to define the term "effectively resettled" in order to avoid any future misunderstanding.

NL: (Drafting):

(k) 'Border procedure' the procedure where a third country national is obligated to leave after a refusal of entry under application of Article 14 of the Schengen Borders Code and the procedures leading to the refusal of entry, including the examination of applications for international protection prior to deciding on the entry to the territory of a third-country national under application of article 41 of the procedures directive/41 of the Procedures regulation.

Article 3

Objectives of the Fund

PT: (Comments):

Portugal supports the elimination of the external dimension from this article / paragraph.

SE: (Comments):

Sweden retains its reservation on the whole article. Sweden strongly advocates the reinsertion of the objective concerning increased solidarity and improved responsibility sharing, as it stands in the current AMIF and in art 80 TFEU.

1. The policy objective of the Fund shall be to contribute to an efficient management of migration flows in line with the relevant Union *acquis* and in compliance with the Union's commitments on fundamental rights.

⁷ *A new recital will elaborate on the need to support the implementation of the Union acquis and the interpretation of the term 'vulnerable person' in line with the relevant legal acts.*

AT: (Drafting):

1. The policy objective of the Fund shall be to contribute to an efficient management of migration flows, **including their external dimension**, in line with the relevant Union *acquis* and in compliance with the Union's commitments on fundamental rights.

AT: (Comments):

Instead of only mentioning the external dimension in para 2(a) , it is very important in our point of view to mention the external dimension already in para 1 to cover all three objectives of the fund.

ES: (Drafting):

*The policy objective of the Fund shall be to contribute to an efficient management of migration flows, **including their external dimensions**, in line with the relevant Union *acquis* and in compliance with the Union's commitments on fundamental rights.*

ES: (Comments):

The Kingdom of Spain would like the Presidency to re-introduce in article 3 a reference to the external dimension of the Fund in third countries given its importance in the internal security (in a similar or identical was as the Austrian proposal). This inclusion will provide coherence to the whole text due to the relationships among different crimes in a globalized and transnational context with interconnected dependencies. The European Council conclusions of 28th June 2018 mandate to include a specific reference to the external dimension in the Regulation of the JHA Funds.

FR: (Drafting):

1. The policy objective of the Fund shall be to contribute to an efficient management of migration flows in line with the relevant Union *acquis* and in compliance with the Union's commitments on fundamental rights, **while taking into account the specific context of each Member State.**

FR: (Comments):

The specific context of MS should be taken into account, as it already is foreseen in the AMIF/ISF regulations (article 3(2) regulation 514/2014)

2. Within the policy objective set out in paragraph 1, the Fund shall contribute to the following specific objectives:

EL: (Comments):

We would like to insert an objective concerning the principle of solidarity and fair burden sharing, as it stands in art. 80 of the Treaty of functioning of

the EU

(a) to strengthen and develop all aspects of the Common European Asylum System, including its external dimension;

AT: (Drafting):

(a) to strengthen and develop all aspects of the Common European Asylum System, ~~including its external dimension;~~

AT: (Comments):

If the external dimension is mentioned in para 1, it would be an option to delete it here.

EE: (Comments):

EE supports the possibility of financing the external dimension of migration in the frame of thematic facility and not from the national envelopes. In case the financing of the external dimension from the national envelopes becomes mandatory, we can support the decreasing the share of thematic facility in favor for MS envelopes.

HR: (Comments):

Adding the wording “**including their external dimensions**” (including external dimensions of migratory flows) implies funding external dimensions by a **specific thematic facility**.

HR does not support setting aside resources from AMF, BMVI and ISF for managing external dimensions of migration.

We emphasize that we are not against the very concept of external dimensions, but we do not support providing the funding by setting aside resources from our funds (AMIF, ISF and BMVI), which are relatively “small” compared to other instruments available.

We believe that Foreign Policy Instruments should be used to tackle the causes of migration. Therefore, we cannot be in favour of setting aside resources from AMF, BMVI and ISF for managing external dimensions of migration.

(b) to support legal migration to the Member States ~~and including~~ to contribute to the integration of third-country nationals;

FR: (Drafting):

(b) to support legal migration to the Member States ~~and including~~ to contribute to the integration of third-country nationals; **in particular for the integration of beneficiaries of international protection.**

FR: (Comments):

We intend to stress the importance of financing measures in favour of beneficiaries of international protection

IT: (Comments):

Support

(c) to contribute to countering irregular migration and ensuring effectiveness of return and readmission in third countries.

FI: (Comments):

The external dimension is applied to this specific objective too which raises a question whether it should be clearly mentioned in the text as it is in the point 2(a).

NL: (Drafting):

(d) to support the the border control executed by the the Member States at the external borders, including the support of the examination of applications for international protection in a border procedure prior to deciding on the entry to the territory of a third-country national and the return procedures where the application has been rejected.

3. Within the specific objectives set out in paragraph 2, the Fund shall be implemented through the implementation measures listed in Annex II.

FR: (Drafting):

3. Within the specific objectives set out in paragraph 2, the Fund shall be implemented through the implementation measures listed in **Article 3a** ~~Annex II~~.

FR: (Comments):

We would prefer to reintegrate the actions eligible to the Fund within the regulation corpus, instead of creating an Annex II, to ensure more predictability and stability.

FR: (Drafting):

Article 3a

1. The Fund shall contribute to the specific objective set out in Article 3(2)(a) by focusing on the following implementation measures:

- (a) ensuring a uniform application of the Union *acquis* and of the priorities related to the Common European Asylum System;**
- (b) supporting the capacity of Member States' asylum systems as regards infrastructures and services where necessary;**
- (c) enhancing solidarity and responsibility-sharing between the Member States, in particular towards those most affected by migratory flows, as well as providing support to Member States contributing to solidarity efforts;**
- (d) enhancing solidarity and cooperation with third countries affected by migratory flows, including through resettlement and other legal avenues to protection in the Union as well as partnership and cooperation with third countries for the purpose of managing migration including its external dimension.**

2. The Fund shall contribute to the specific objective set out in Article 3(2)(b), by focusing on the following implementation measures:

- (a) supporting the development and implementation of policies promoting legal migration and the implementation of the Union legal migration *acquis*;**
- (b) promoting integration measures for the social and economic inclusion of third-country nationals, preparing their active participation in and their acceptance by the receiving society., in particular with the involvement of local or regional authorities and civil society organisations in synergy with the European Social Fund (ESF+) which funds measures supporting access of migrants to the labour market.**

3. The Fund shall contribute to the specific objective set out in Article 3(2)(c), by focusing on the following implementation measures:

- (a) ensuring a uniform application of the Union *acquis* and policy priorities regarding infrastructure, procedures and services;**
- (b) supporting an integrated and coordinated approach to return management at the Union and Member States' level, to the development of capacities for effective and sustainable return and reducing incentives for irregular migration;**
- (c) supporting assisted voluntary return and reintegration;**
- (d) strengthening cooperation with third countries and their capacities to implement readmission agreements and other arrangements, and enable sustainable return.**

Article 4

Scope of support

ES: (Comments):

The Kingdom of Spain welcomes the changes introduced by the Romanian Presidency on this article.

1. Within the objectives referred to in Article 3, and in line with the implementation measures listed in Annex II, the Fund shall ~~in particular~~ support ~~the~~ actions **as those** listed in Annex III.

DE: (Comments):

Germany would like to have a clarification if the new wording means that also other measures than those listed in Annex II should be fundable. Should this be the case, we would like to know how it is ensured that measures funded by the MS still are in line with the goals of the funds.

FR: (Drafting):

1. Within the objectives referred to in Article 3, and in line with the implementation measures listed in **article 3a** ~~Annex II~~, the Fund shall in particular support the actions listed **hereinafter/in paragraph 2a** in Annex III.

FR: (Comments):

We would prefer to reintegrate the actions eligible to the Fund within the regulation corpus, instead of creating an Annex III, to ensure more predictability and stability.

NL: (Drafting):

1. Within the objectives referred to in Article 3, and in line with the implementation measures listed in Annex II, the Fund shall ~~in particular~~ support ~~the~~ actions **as those such as** listed in Annex III

NL: (Comments):

Wording of the article in line with wording in Annex III.

Changes in compromise suggests limitation of actions.

PT: (Comments):

PT strongly supports this change and considers it fundamental in the final version to be adopted for the current Regulation. The actions listed in Annex

III must be considered as indicative, and not as exclusive.

2. To achieve the objectives of this Regulation, the Fund may support the actions in line with the Union priorities as referred to in Annex III in relation to and in third countries, where appropriate, in accordance with Article 5 and 6.

FR: (Drafting):

2. To achieve the objectives of this Regulation, the Fund may support the actions in line with the Union priorities as referred to in Annex III in relation to and in third countries, where appropriate, in accordance with Article 5 and 6.

FR: (Drafting):

2a. The Fund shall support, in particular, the following actions :

1. Within the policy objective referred to in Article 3(1), the Fund shall in particular support the following:

(a) the establishment and development of national strategies in asylum, legal migration, integration, return and irregular migration;

(b) the setting up of administrative structures, and systems, including the development of IT systems and the interoperability of databases and, tools and training of staff, including local authorities and other relevant stakeholders;

(c) the development, monitoring and evaluation of policies and procedures including on collection, and exchange and analysis of information and data, development and application of common statistical tools, methods and indicators for measuring progress and assessing policy developments;

(d) the exchanges of information, best practices and strategies, mutual learning, studies and research, the development and implementation of joint actions and operations and the setting-up of transnational cooperation networks;

(e) assistance and support services consistent with the status and the needs of the person concerned, in particular the vulnerable groups;

(f) actions aimed at enhancing awareness of asylum, integration, legal migration and return policies among stakeholders and the general public;

(g) actions to enhance the external dimension of migration management.

2. Within the specific objective referred to in Article 3(2)(a), the Fund shall in particular support the following actions:

(a) providing material aid, including assistance at the border;

(b) conducting asylum procedures (i.e. staff, operational needs) to ensure compliance with the asylum acquis;

(c) identifying applicants with special procedural or reception needs;

(d) establishing or improving reception accommodation infrastructure, including the possible joint use of such facilities by more than one Member State;

(e) enhancing the capacity of Member States to collect, analyse and disseminate country of origin information;

(f) actions related to the conducting of procedures for the implementation of the Union Resettlement [and Humanitarian Admission] Framework or national resettlement schemes that are compatible with the Union Resettlement Framework;

(g) transfers of beneficiaries of international protection;

(h) enhancing capacities of third countries to improve the protection of persons in need of protection;

(i) establishing, developing and improving effective alternatives to detention, in particular in relation to unaccompanied minors and families.

3. Within the specific objective referred to in Article 3(2)(b), the Fund shall in particular support the following:

(a) information packages and campaigns to raise awareness of legal migration channels to the Union, including on the Union legal migration acquis;

(b) development of mobility schemes to the Union, such as circular or temporary migration schemes, including training to enhance employability;

(c) cooperation between third countries and the recruitment agencies, the employment services and the immigration services of Member States;

- (d) the assessment of skills and qualifications acquired in a third country, as well as their transparency and compatibility with those of a Member State;
- (e) assistance in the context of applications for family reunification within the meaning of Council Directive 2003/86/EC⁸;
- (f) assistance in relation to a change of status for third-country nationals already legally residing in a Member State, in particular in relation to the acquisition of a legal residence status defined at Union level;
- (g) integration measures such as tailored support in accordance with the needs of third-country nationals and integration programmes focusing on education, language and other training such as civic orientation courses and professional guidance, administrative and legal guidance, one-stop shops for integration providing general advice and assistance to third country nationals in areas such as housing, means of subsistence, psychological care, health care, etc;⁹
- (h) actions promoting equality in the access and provision of public and private services to third-country nationals, including adapting them to the needs of the target group;
- (i) cooperation between governmental and non-governmental bodies in an integrated manner, including through coordinated integration-support centres, such as one-stop shops;
- (j) actions enabling and supporting third-country nationals' introduction to and active participation in the receiving society and actions promoting acceptance by the receiving society;
- (k) promoting exchanges and dialogue between third-country nationals, the receiving society and public authorities, including through the consultation of third-country nationals, and intercultural and inter-religious dialogue.

4. Within the specific objective referred to in Article 3(2)(c), the Fund shall in particular support the following:

- (a) infrastructure for reception or detention, including the possible joint use of such facilities by more than one Member State;
- (b) introduction, development and improvement of effective alternative measures to detention, in particular in relation to

⁸ Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification, (OJ L 251, 03/10/2003 p. 12 – 18.).

⁹ A recital will indicate that every integration measure that can be funded within the current AMIF (2014-2020) will continue to be eligible in the next programming period 2021-2027.

unaccompanied minors and families;

(c) introduction and reinforcement of independent and effective systems for monitoring forced return, as laid down in Article 8(6) of Directive 2008/115/EC¹⁰;

(d) countering incentives for irregular migration, including the employment of irregular migrants, the establishment of control mechanisms and sanctions, as well as information and awareness campaigns for employees and migrants through effective and adequate inspections based on risk assessment, the training of staff, the setting up and implementation of mechanisms through which irregular migrants can claim back payments and lodge complaints against their employers, or information and awareness raising campaigns to inform employers and irregular migrants about their rights and obligations pursuant to Directive 2009/52/EC¹¹;

(e) preparation of return, including measures leading to the issuing of return decisions, the identification of third-country nationals, the issuing of travel documents and family tracing;

(f) cooperation with the consular authorities and immigration services or other relevant authorities and services of third countries with a view to obtaining travel documents, facilitating return and ensuring readmission including through the deployment of third-country liaison officers;

(g) return assistance, in particular assisted voluntary return and information about assisted voluntary return programmes;

(h) removal operations, including related measures, in accordance with the standards laid down in Union law, with the exception of coercive equipment;

(i) measures to support the returnee's durable return and reintegration;

(j) facilities and services in third countries ensuring appropriate temporary accommodation and reception upon arrival, including for unaccompanied minors and other vulnerable groups in line with international standards;

(k) cooperation with third countries on countering irregular migration and on effective return and readmission, including in the framework of the implementation of readmission agreements and other arrangements;

¹⁰ Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals (OJ L 348, 24.12.2008, p. 98).

¹¹ Directive 2009/52/EC of the European Parliament and of the Council of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals (OJ L 168, 30.6.2009., p. 24–32).

- (l) measures aimed at raising awareness of the appropriate legal channels for immigration and the risks of illegal immigration;**
(m) support for and actions in third countries, including on infrastructure, equipment and other measures, provided these contribute to enhancing effective cooperation between third countries and the Union and its Member States on return and readmission.

SE:(Drafting):

2. To achieve the objectives of this Regulation, the Fund may support the actions in line with the Union priorities as referred to in Annex III in relation to and in third countries, where appropriate, in accordance with Article 5 and **18a**

SE: (Comments):

The reference to article 6 should be deleted and instead reference shall be made to article 18 a in line with the amendments made by the Presidency

3. The objectives of this Regulation shall support actions focusing on one or more target groups within the scope of Articles 78 and 79 of the Treaty on the Functioning of the European Union.

SE: (Comments):

In order to bring more clarity to the Regulation Sweden advocates that the target groups of the Fund should be listed in the proposal

.

Article 5

Third countries associated to the Fund

The Fund shall be open to third countries in accordance with the conditions laid down in a specific agreement covering the participation of the third country to the ~~Asylum and Migration~~ Fund, provided that the agreement:

HR: (Comments):

HR supports possible establishment of cooperation with third countries with a view to achieving the Fund's objectives through implementation

measures set out in Annex II, but we also suggest further clarification of what the said cooperation may include.
– ensures a fair balance as regards the contributions and benefits of the third country participating in the Fund;
– lays down the conditions of participation in the Fund, including the calculation of financial contributions to the Fund and their administrative costs. These contributions shall constitute assigned revenues in accordance with Article [21(5)] of Regulation (EU, Euratom) 2018/1046 the Financial Regulation;
– does not confer to the third country a decisional power on the Fund;
– guarantees the rights of the Union to ensure sound financial management and to protect its financial interests.
<u>Article 6</u>
<u>Eligible entities</u>
1. <u>The following entities may be eligible:</u>
(a) <u>legal entities established in any of the following countries:</u>
(1) <u>a Member State or an overseas country or territory linked to it;</u>
(2) <u>third country associated to the Fund;</u>

(3) — third country listed in the work programme under the conditions specified therein;
(b) — any legal entity created under Union law or any international organisation.
2. — Natural persons are not eligible.
3. — Legal entities established in a third country are exceptionally eligible to participate where this is necessary for the achievement of the objectives of a given action.
4. — Legal entities participating in consortia of at least two independent entities, established in different Member States or overseas countries or territories linked to those states or in third countries are eligible.
CHAPTER II
FINANCIAL AND IMPLEMENTATION FRAMEWORK
Section 1
Common provisions
Article 7
General principles

1. Support provided under this Regulation shall complement national, regional and local intervention, and shall focus on adding value to the objectives of this Regulation.
2. The Commission and the Member States shall ensure that the support provided under this Regulation and by the Member States is consistent with the relevant activities, policies and priorities of the Union and is complementary to other Union instruments.
FR: (Drafting): 2. The Commission and the Member States shall ensure that the support provided under this Regulation and by the Member States is consistent with the relevant activities, policies and priorities of the Union and is complementary to other Union instruments <u>while taking into account the specific context of each Member State.</u>
3. The Fund shall be implemented in shared, direct or indirect management in accordance with Articles [62(1) (a), (b) and (c)] of Regulation (EU, Euratom) 2018/1046 the Financial Regulation .
Article 8 Budget FR: (Comments): <i>It is necessary to have a provisional allocation of envelopes between the MS, this can be done indicatively and independently of the discussions to be held at political level.</i> <i>The allocative key should take into account MS commitments concerning resettlement and relocation programmes during the MFF 2014-2020.</i> PT: (Comments): Pertaining to Arts. 8 (Budget), 11 (Budgetary Resources) and 14 (Mid Term Review) - PT recalls written contributions on this matter, advocating the attribution of clear priority, in terms of the budget available, to the National Programs, in detriment of the Thematic Facilities. In this context, and bearing in mind the policy objectives set out by the European Commission above, the same results could be reached, with a

significantly lower administrative burden, as well as with a clearly increased amount of transparency and predictability, if the following changes were made:

- The 40% of the financial allocation to be attributed, under the AMIF, to the Thematic Facilities (art. 7, n. 2, b)), should decrease to 30%;
- The remaining 10% of the financial allocation, coming from the Thematic Facilities (current proposal) should increase the 60% of the allocation for Shared Management / National Programs (art. 7, n. 2, a)).
- Nonetheless, these extra 10%, coming from the Thematic Facility, should be added to the 10% already left, under the European Commission's initiative, to be allocated in the context of the Mid Term Review – as foreseen in art.s 11 and 14 of the current Regulation proposal – which would now amount to 20% of budget left for the review taking place in 2024.

In case there is an agreement from the Presidency, from the European Commission, as well as that of the remaining Member States, on this proposal, the subsequent adjustments should be made to the following articles:

- Art. 8 (calculations over n. 2 a) and b));
- Art. 11 (calculations over n. 1 a) and b));
- Art. 14.

1. The financial envelope for the implementation of the Fund for the 2021-2027 period shall be EUR [10 415 000 000] in [current prices].

BG: (Comments):

We consider necessary an indicative breakdown of allocations for the MS under AMF to be provided at the earliest possible stage.

2. The financial resources shall be used as follows:

FI: (Comments):

The proposed 60% - 40% share seems purposeful especially if the external dimension will be mainly or fully included in the thematic facility.

(a) EUR [6 249 000 000] shall be allocated to the programmes implemented under shared management;

ES: (Drafting):

(a) EUR [7 290 500 000] shall be allocated to the programmes implemented under shared management;

ES: (Comments):

The Kingdom of Spain proposes that 70% of the resources shall be allocated to national programmes and 30% to the thematic facility.

IT: (Comments):

Despite of square brackets, IT reiterates the proposal for increasing the allocation to national programmes to 70% of the resources of the Fund, thus reducing to 30% the resources available for the thematic facility.

(b) EUR [4 166 000 000] shall be allocated to the thematic facility.

ES: (Drafting):

(b)EUR [3 124 500 000] shall be allocated to the thematic facility.

[2a. The above amounts include a dedicated, significant component for external migration management.]

AT: (Comments):

AT thinks that the external dimension should be primarily funded under the thematic facility with an additional amount besides the already stated budget. Furthermore, the possibility to fund the external dimension in the NPs should be explicitly open to MS.

BG: (Drafting):

[2a. The ~~above~~ amounts in point b) includes a dedicated, ~~significant~~ envelope for external migration management.]

BG: (Comments):

We consider that the Home Affairs financial instruments should provide complementary support for the external migration and the basic funding should be provided by the external instruments. We consider appropriate that such a dedicated component should be integrated only in the thematic facility which will ensure better coordination. The dedicated funding for the external dimensions should not affect the national programmes and the adequate level of funding for already set objectives of the Fund.

CZ: (Drafting):

[2a. The amount in 2 (b) includes a dedicated, significant component for external migration management.]

CZ: (Comments):

The CZ suggests redrafting the proposal in order to reflect the negobox conclusion. The dedicated significant component should be part of the thematic facility.

DE: (Comments):

Since this is also a horizontal question, the respective working group should be consulted.

The fund will have substantive tasks financing the internal dimension (CEAS, project funding etc.). The fund's efficiency in this field shall not be affected. Therefore, measures in third countries shall be financed primarily by other instruments.

The distinction between the funds must remain clear, in order to avoid double funding. To this end, it still needs to be clarified which supporting measures are to be included under the objective of "external migration management" and how coherence with the external financial instruments will be ensured.

If funded by AMIF, the external dimension should be funded by the Thematic Facility not under the national programmes.

EE: (Comments):

EE supports the possibility of financing the external dimension of migration in the frame of thematic facility and not from the national envelopes. In case the financing of the external dimension from the national envelopes becomes mandatory, we can support the decreasing the share of thematic facility in favor for MS envelopes.

EL: (Drafting):

The abovementioned amounts, in 2(b), include a dedicated component for external migration management.

EL: (Comments):

It should be clarified that the amounts of thematic facility should be used for the external dimension of the Fund and not the amounts of shared management. Furthermore, this amount should be relevant/analogous to the needs of M-S through specific actions, emergency assistance and the amounts used by other financial instruments (Neighbourhood Fund etc).

ES: (Comments):

The Kingdom of Spain welcomes the inclusion of [2a] and awaits the horizontal negotiations of the mentioned “*negotiating boxes*”. In this sense, in light of several European Council Conclusions, pointing out the need to boost the external dimension of JHA Funds, we consider that budget should allow Member States to allocate –without any imposition and according to their will- funds of the National Programmes and/or Thematic Facility to carry out external actions in the AMF framework.

FI: (Comments):

Thematic facility seems in many ways to be the natural location for actions implementing the external dimension and the component as such. However, if a MS would like to implement external dimension within the objectives of the National Programme, it should be enabled.

FR: (Drafting):

~~*[2a. The above amounts include a dedicated, significant component for external migration management.]*~~

FR: (Comments):

We are strongly opposed to dedicating a fix or a “significant component” for external action, as the Fund needs to keep a sufficient flexibility to represent a real added-value for MSs’.

HR: (Comments):

Adding the wording “**including their external dimensions**” (including external dimensions of migratory flows) implies funding external dimensions by a **specific thematic facility**.

HR does not support setting aside resources from AMF, BMVI and ISF for managing external dimensions of migration.

We emphasize that we are not against the very concept of external dimensions, but we do not support providing the funding by setting aside resources from our funds (AMIF, ISF and BMVI), which are relatively “small” compared to other instruments available.

We believe that Foreign Policy Instruments should be used to tackle the causes of migration. Therefore, we cannot be in favour of setting aside resources from AMF, BMVI and ISF for managing external dimensions of migration.

IT: (Drafting):

~~***The above amounts include a dedicated, significant component for external migration management***~~

IT: (Comments):

The original Commission proposal is deemed to be more suitable to meet MS needs. In any case, *component* is preferred to *envelope*.

MT: (Comments):

With regards to the specific amount dedicated to the external dimension of migration in the new proposed paragraph 2(a) in article 7, it is noted that this is a bracketed provision and hence outside the scope of this compromise text. We do not agree that the amounts for external migration management should be taken from national programmes. Malta reiterates that funding for external migration management should be provided through the thematic facility, over and above the amounts proposed by the Commission.

NL: (Comments):

Scrutiny reservation. This is a horizontal issue in relation to NDICI.

PT: (Drafting):

[2a. The above amounts include a dedicated, significant component, supported by the Thematic Facilities, for external migration management.]

PT: (Comments):

- Portugal limits its support to the introduction of any fixed amount of allocation, under the AMIF, to be attributed to the external dimension, to the need to obtain confirmation that this amount will exclusively come from the Thematic Facilities – and thus not affect the allocations to the National Programs (as seems to be indicated under Art. 9, new wording under parag. 2);
- Portugal considers that it should be born in mind that the NDICI already includes a minimum threshold of 10% allocated to the external dimension of migrations, in amounts that largely surpass those that may be allocated from the AMIF.

SE: (Drafting):

[2a. The ~~above~~ amounts in 2 (b) include a dedicated, significant component for external migration management.]

SE: (Comments):

Scrutiny reservation on art 8.2(a).

Sweden does not support a dedicated component or earmarked funding for external migration management. Earmarking means less flexibility in the use of the funding and there is also the risk of remaining committed amounts, as has been the case with AMIF.

Furthermore, the external dimension should primarily be funded through the *thematic facility* and be voluntary for Member States.

The external dimension must be funded by prioritizing the financial means for these actions within the funds. Additional financial means should not be allocated to the funds and the overall MFF framework should not be extended

3. Up to 0.42 % of the financial envelope shall be allocated for technical assistance at the initiative of the Commission as referred to in Article 29 of the Regulation EU ../.. [Common Provisions Regulation].

Article 9

General provisions on the implementation of the thematic facility

1. The financial envelope referred to in Article 8(2)(b) shall be allocated flexibly through the thematic facility using shared, direct and indirect management as set out in work programmes.¹² Funding from the thematic facility shall be used for its components:

(a) specific actions;

EL: (Comments):

We would like to be informed about the allocation and the percentages between the various components of the thematic facility.

Therefore, we suggest redrafting the text so it is clear the allocation predicted to its component of the thematic facility.

FR: (Comments):

It is necessary to establish a non-exhaustive list for specific actions, in a new Annex for example.

(b) Union actions;

(c) emergency assistance;

(d) resettlement;

EE: (Comments):

In Art(2) both definitions of „humanitarian admission“ and „resettlement“ have been brought out in the meaning of EURF. Art 9 (General provisions on the implementation of the thematic facility) only mentions „resettlement“ among the thematic components. In case both reception forms should be covered then also both terms should be used throughout.

¹² *A new recital will indicate that the financial envelope allocated to the thematic facility will primarily serve to reinforce programmes (through top-ups, emergency assistance and specific actions).*

FR: (Drafting):

(d) resettlement **and humanitarian admission** ;

FR: (Comments):

These measures are covered by the current AMIF, according to the latest Regulation

(e) support to Member States contributing to solidarity and responsibility efforts;

~~and~~

(f) **and** European Migration Network.

Technical assistance at the initiative of the Commission shall also be supported from the financial envelope for the thematic facility.

2. Funding from the thematic facility shall address priorities with a high added value to the Union or be used to respond to urgent needs in line with agreed Union priorities as outlined in Annex II.

AT: (Drafting):

2. Funding from the thematic facility shall address priorities with a high added value to the Union or be used to respond to urgent needs in line with agreed Union priorities as outlined in Annex II. **Without prejudice to Article 13, the external dimension aspects referred to in Article 3(1) will be tackled and financed through the components of the thematic facility.**

AT: (Comments):

AT would like add the additional sentence in para 2 again, as it makes it clear that the external dimension aspects should be funded under the thematic facility, but the MS are able to fund it under the NPs as well, if needed.

ES: (Drafting):

*“Funding from the thematic facility shall address priorities with a high added value to the Union or to be used to respond to urgent needs, in line with agreed Union priorities as outlined in Annex II. **Without prejudice to Article 12, the external dimension aspects referred to the Article 3(1) will be tacked and financed through the components of the thematic facility.***

ES: (Comments):

The Kingdom of Spain prefers the previous Presidency proposal to article 8.2.

FR: (Drafting):

2. Funding from the thematic facility shall address priorities with a high added value to the Union or be used to respond to urgent needs in line with agreed Union priorities as outlined in ~~Annex II~~ **Article 3a**.

SE: (Comments):

Sweden welcomes the amendment made by the Presidency (deletion of the last sentence in paragraph 2)

3. When funding from the thematic facility is granted in direct or indirect management to Member States, it shall be ensured that selected projects are not affected by a reasoned opinion by the Commission in respect of an infringement under Article 258 of the TFEU that puts at risk the legality and regularity of expenditure or the performance of projects.

4. When funding from the thematic facility is implemented in shared management, the Commission shall, for the purposes of Articles 18 and 19(2) of Regulation EU ../.. [Common Provisions Regulation], assess whether the foreseen actions are not affected by a reasoned opinion by the Commission in respect of an infringement under Article 258 of the TFEU that puts at risk the legality and regularity of expenditure or the performance of the

projects.

5. The Commission shall establish the overall amount made available for the thematic facility under the annual appropriations of the Union budget. The Commission shall **by means of implementing acts** adopt financing decisions as referred to in Article [110] of **Regulation (EU, Euratom) 2018/1046** the Financial Regulation for the thematic facility identifying objectives and actions to be supported and specifying the amounts for each of its components as referred to in paragraph 1. Financing decisions shall set out, where applicable, the overall amount reserved for blending operations. **Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 33(2).**

AT: (Comments):

AT is in favour of these changes.

DE: (Drafting):

[...] Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 33(3).

DE: (Comments):

Due to art. 2 para 2 a Regulation (EU) 182/2011, implementing acts related to financial or budgetary questions shall be adopted in accordance with the examination procedure, , while – in contrast -the advisory procedure may apply only in duly justified cases (art. 2 para 3 S.3 Regulation (EU) 182/2011.

MT: (Comments):

With regards to paragraph 5 we agree that it is clarified by which procedure the Commission shall adopt the financing decisions and that this should be by implementing acts. On the other hand, we would propose that actions 1a and 1b are decided by an examination procedure, whilst action 1c is decided through an advisory procedure.

NL: (Drafting):

5. The Commission shall establish the overall amount made available for the thematic facility under the annual appropriations of the Union budget. The Commission shall **by means of implementing acts** adopt financing decisions as referred to in Article [110] of **Regulation (EU, Euratom)**

2018/1046 the Financial Regulation for the thematic facility identifying objectives and actions to be supported and specifying the amounts for each of its components as referred to in paragraph 1. Financing decisions shall set out, where applicable, the overall amount reserved for blending operations. **Those implementing acts shall be adopted in accordance with the ~~advisory~~ examination procedure referred to in Article 33(2).**

On duly justified imperative grounds of urgency, the Commission shall adopt immediately applicable implementing acts in accordance with the procedure referred to in Article 33(3).

NL: (Comments):

Horizontal issue in all JHA-funds. Should be aligned with BMVI and ISF.

In opinion of NL this is the right procedure to ensure involvement of member states. This procedure is already used in current practice and does not have to create delay. The procedure could be done also by email.

SE: (Drafting):

Those implementing acts shall be adopted in accordance with the examination ~~advisory~~ procedure referred to in Article 33

SE: (Comments):

Sweden advocates that the financing decisions should be adopted in accordance with the *examination procedure* as it is in the current AMIF, in the current negotiations of the Justice programme as well as in the Instrument for custom control equipment (BMVI)

6. The thematic facility shall in particular, support actions falling under the implementation measure 2(b) of Annex II that are implemented by the ***national, regional and*** local ~~and regional~~ authorities or civil society organisations.

AT: (Comments):

AT does not oppose to these changes.

BG: (Comments):

We support the proposed modification of the provision.

DE: (Comments):

What is the added value of adding the term “national”?

EL: (Drafting):

The thematic facility shall in particular, support actions falling under the implementation measure 2(b) and (c) of Annex II that are implemented by the **national, regional and** local ~~and regional~~ authorities or civil society organisations.

EL: (Comments):

The thematic facility shall support the external actions in Third Countries and specific or Union Actions

IT: (Comments):

Support

PT: (Comments):

Portugal supports this change.

7. Following the adoption of a financing decision as referred to in paragraph 5, the Commission may amend the programmes implemented under shared management accordingly.

8. These financing decisions may be annual or multiannual and may cover one or more components of the thematic facility.

Section 2

Support and implementation under shared management
Article 10
Scope
1. This section applies to the part of the financial envelope referred to in Article 8(2)(a), and additional resources to be implemented under shared management according to the Commission decision for the thematic facility referred to in Article 9.
2. Support under this section shall be implemented under shared management in accordance with Article [63] of Regulation (EU, Euratom) 2018/1046 the Financial Regulation and the Regulation EU ../.. [Common Provisions Regulation].
Article 11
Budgetary resources
FR: (Comments): <i>Scrutiny reserve.</i>
PT: (Comments): Pertaining to Arts. 8 (Budget), 11 (Budgetary Resources) and 14 (Mid Term Review) - PT recalls written contributions on this matter, advocating the attribution of clear priority, in terms of the budget available, to the National Programs, in detriment of the Thematic Facilities. In this context, and bearing in mind the policy objectives set out by the European Commission above, the same results could be reached, with a significantly lower administrative burden, as well as with a clearly increased amount of transparency and predictability, if the following changes were made: - The 40% of the financial allocation to be attributed, under the AMIF, to the Thematic Facilities (art. 7, n. 2, b)), should decrease to 30%; - The remaining 10% of the financial allocation, coming from the Thematic Facilities (current proposal) should increase the 60% of the allocation

for Shared Management / National Programs (art. 7, n. 2, a)).

- Nonetheless, these extra 10%, coming from the Thematic Facility, should be added to the 10% already left, under the European Commission's initiative, to be allocated in the context of the Mid Term Review – as foreseen in art.s 11 and 14 of the current Regulation proposal – which would now amount to 20% of budget left for the review taking place in 2024.

In case there is an agreement from the Presidency, from the European Commission, as well as that of the remaining Member States, on this proposal, the subsequent adjustments should be made to the following articles:

- Art. 8 (calculations over n. 2 a) and b));
- Art. 11 (calculations over n. 1 a) and b));
- Art. 14.

1. Resources referred to in Article 8(2)(a) shall be allocated to the national programmes (the 'programmes') implemented by Member States under shared management indicatively as follows:

(a) EUR [5 207 500 000] to the Member States in accordance with [Annex I];

(b) EUR [1 041 500 000] to the Member States for the adjustment of the allocations for the programmes as referred to in Article 14(1).

~~2. Where the amount referred to in paragraph 1(b) is not allocated, the remaining amount may be added to the amount referred to in Article 8(2)(b).~~

AT: (Drafting):

Where the amount referred to in paragraph 1(b) is not allocated, the remaining amount may be added to the amount referred to in Article 8(2)(b) **allocated to the Member States that meet the criteria referred to in Art. 14 (2) according to the updated data at the mid-term review.**

AT: (Comments):

AT has a scrutiny reservation until the actual amounts and the allocation is clear.

Besides AT would be in favour that unused amounts may be allocated to those Member States who then are affected the most.

BG: (Comments):

We support the proposed deletion of the provision.

DE: (Comments):

Germany does not support this modification; when a MS is not able to commit its financial means of 10% until the mid term review (as regulated in Art. 14 (1)), it is not adequate to give this MS even more funding. Thus, this paragraph should be kept.

ES: (Comments):

The Kingdom of Spain would like the Presidency and/or the Commission to clarify what will happen with the remaining funds non allocated that were foreseen in paragraph 2 of the original version regulation proposal.

FR: (Comments):

Scrutiny reserve.

SE: (Drafting):

2. Where the amount referred to in paragraph 1(b) is not allocated, the remaining amount may be allocated ***to the Member States that meet the criteria referred to in Article 14(2) according to the updated data at the mid-term review.***

SE: (Comments):

Sweden advocates the reinsertion of paragraph 2 and the suggested wording by the Austrian Presidency in doc 15207/18 that was discussed on the meeting of December 17th 2018,

Article 12

Co-financing rates

1. The contribution from the Union budget shall not exceed 75 % of the total eligible expenditure of a project. EL: (Comments): 1. The contribution from the Union budget could reach 85 % of the total eligible expenditure of a project. EL: (Drafting): We suggest a co-financing rate of 85% to the countries with high migratory flows
2. The contribution from the Union budget may be increased to 90 % of the total eligible expenditure for projects implemented under specific actions.
3. The contribution from the Union budget may be increased to 90 % of the total eligible expenditure for actions listed in Annex IV. DE: (Comments): Scrutiny reservation with regard to the increase of the contribution from the union budget due to a possible loss of MS ownership
4. The contribution from the Union budget may be increased to 100 % of the total eligible expenditure for operating support. DE: (Drafting): The contribution from the Union budget may be increased to 100 % of the total eligible expenditure for operating support, without prejudice to Art.

190 (1) of the Financial Regulation.

DE: (Comments):

Scrutiny reservation with regard to the increase of the contribution from the union budget due to a possible loss of MS ownership

5. The contribution from the Union budget may be increased to 100 % of the total eligible expenditure for emergency assistance.

DE: (Drafting):

The contribution from the Union budget may be increased to 100 % of the total eligible expenditure for emergency assistance, **without prejudice to Art. 190 (1) of the Financial Regulation.**

DE: (Comments):

Scrutiny reservation with regard to the increase of the contribution from the union budget due to a possible loss of MS ownership

FR: (Drafting):

5. The contribution from the Union budget may be increased to 100 % of the total eligible expenditure for emergency assistance **and for emergency situation.**

5a. Within the limits set out in Article 31(2)(d) of the Regulation (EU) No [CPR], technical assistance of Member States may be financed up to 100 % of the Union budget contribution.

AT: (Comments):

Fine with AT.

BG: (Comments):

We support the proposed modification of the provision.

EE: (Drafting):

5a. ~~Within the limits set out in Article 31(2)(d) of the Regulation (EU) No [CPR],~~ The contribution from the Union budget to the technical assistance **at the initiative of Member States may be financed up to 100 % of the **total eligible expenditure.** ~~Union budget contribution.~~**

EE: (Comments):

EE supports the PRES proposal to add a clear reference to financing the TA up to 100%. However, there is no need to refer to the CPR as art 12 in the AMF regulation addresses the co-financing rate (not the overall proportion of the TA). EE suggests to use similar wording as in the current period. Moreover, the 100% co-financing rate should apply both to flat rate financing and financing not linked to costs for TA.

ES: (Comments):

The Kingdom of Spain welcomes the inclusion of paragraph 5a.

IT: (Comments):

Support

MT: (Comments):

It is understood from our end that this paragraph means that technical assistance of Member States may be financed entirely from the Union budget (up to the limit set out in the CPR). Malta would like confirmation that this is the correct interpretation.

In addition, Malta is requesting that alignment between the text and the partial general approach of the CPR is made.

6. The Commission decision approving a programme shall set the co-financing rate and the maximum amount of support from this Fund for the

types of actions referred to in paragraphs 1 to 5.

ES: (Comments):

Concerning point 6, the Kingdom of Spain asks the Presidency/Commission to propose an alternative drafting in order to include National Programmes' flexibility when a change of circumstances occur. The Spanish position is based on Member States need to count with a certain margin of reaction if there is a change of circumstances.

7. For each specific objective, the Commission decision approving a programme shall set out whether the co-financing rate for the specific objective is ~~to be~~ applied to either of the following:

DE: (Comments):

Under what circumstances shall option (a), under which circumstances option (b) be chosen? We would like to have a clarification on that.
What is the reasoning behind such differentiation?
What are the decision criteria? Where are stipulated within the regulation?

FR: (Drafting):

7. ~~For each specific objective, the Commission decision shall set out whether t~~ The co-financing rate for the specific objective is to be applied to the total contribution, including the public and private contributions

FR: (Comments):

*It should be possible, as it is for 2014-2020 programmes, for a project to be financed by the EU fund and private cofinancing, without public cofinancing (when the beneficiary is an NGO).
Therefore, cofinancing should be applied to the total contribution, including public and private contribution.*

(a) the total contribution, including the public and private contributions; ~~or~~

FR: (Drafting):

~~(a) the total contribution, including the public and private contributions; or~~

(b) the public contribution only.

FR: (Drafting):

~~(b) the public contribution only.~~

Article 13

Programmes

ES: (Comments):

The Kingdom of Spain welcomes the changes introduced by the Romanian Presidency on article 13, excepto for the comment on paragraph 8.

1. Each 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. In defining the priorities of their programmes Member States shall ensure that the implementation measures set out in Annex II are adequately addressed.

DE: (Comments):

How shall a MS ensure that the Programmes are consistent with Union priorities? What specific measures need to be done in order to comply with this regulation?

FR: (Drafting):

Each 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. In defining the priorities of their programmes Member States shall ensure that the implementation measures set out in **article 3a Annex H** are adequately addressed.

2. ~~The Commission shall ensure that the European Union Agency for Asylum and the European Border and Coast Guard Agency are associated to the process of developing the programmes at an early stage, as regards the areas of their competence.~~ The Commission shall consult the European Border and Coast Guard Agency and the European Union Agency for Asylum ***as regards the areas of their competence*** on the draft programmes to ensure consistency and complementarity of the actions of the agencies and those of the Member States. ***The consultation shall be conducted in a timely manner without delaying the approval and implementation of the programmes.***

AT: (Comments):

AT is in favour of the changes.

BG: (Comments):

We support the proposed modification of the provision.

FR: (Drafting):

2. ~~The Commission shall ensure that the European Union Agency for Asylum and the European Border and Coast Guard Agency are associated to the process of developing the programmes at an early stage, as regards the areas of their competence.~~ The Commission shall consult the European Border and Coast Guard Agency and the European Union Agency for Asylum ***as regards the areas of their competence*** on the draft programmes to ensure consistency and complementarity of the actions of the agencies and those of the Member States. ***The consultation shall be conducted in a timely manner without delaying the approval and implementation of the programmes. The results of the consultation shall be notified to the concerned Member State, which may present its observations.***

FR: (Comments):

We deem necessary that MS have the opportunity to introduce their observations on the Agencies analysis of their national program.

HR: (Comments):

We do not fully agree with the proposed text related to the role of the EBCG and EUAA in the drafting process of MS national programmes. We believe that the consulting role of the agencies in the drafting process is not clear. We would appreciate a more detailed explanation of their competence and purpose in the drafting process of the MS national programmes.

We also propose that, for now, the expression “European Union Agency for Asylum” should be put in square brackets as the EUAA Regulation has not yet been adopted.

IT: (Comments):

Support

3. The Commission may associate the European Union Agency for Asylum and European Border and Coast Guard Agency in monitoring and evaluation tasks as referred to in Section 5 where appropriate in particular in view of ensuring that the actions implemented with the support of the Fund are compliant with the relevant Union *acquis* and agreed Union priorities.

4. Further to a monitoring exercise as carried out in accordance with Regulation (EU) [../..] [EUAA Regulation] or the adoption of recommendations in accordance with Regulation (EU) No 1053/2013 which are within the scope of this Regulation, the Member State concerned shall examine, together with the Commission, ~~and where relevant with the European Union Agency for Asylum and the European Border and Coast Guard Agency,~~ how to address the findings **and** ~~including any shortcomings or issues of capacity and preparedness, and shall implement the~~ recommendations through its programme **with the support of this Fund, where appropriate.**

AT: (Comments):

AT is in favour of the changes.

BG: (Comments):

We support the proposed modification of the provision.

DE: (Comments):

We would like to know in which cases the support of the fund would be appropriate, and how the support of the fund would function in practice.

IT: (Comments):

Support

NL: (Comments):

NL can support this change but the wording should be aligned with the wording in BMVI

SE: (Drafting):

Further to a monitoring exercise as carried out in accordance with Regulation (EU) [../..] [EUAA Regulation] or the adoption of recommendations in accordance with Regulation (EU) No 1053/2013 which are within the scope of this Regulation, the Member State concerned shall examine, together with the Commission, and where relevant with the European Union Agency for Asylum and the European Border and Coast Guard Agency, how to address the findings, including any shortcomings or issues of capacity and preparedness, and shall implement the recommendations through its programme.

SE: (Comments):

Sweden advocates the reinsertion of the original text by the commission where reference is made to EUAA and EBCG and to “shortcomings or issues of capacity and preparedness”.

5. Where necessary, the programme in question shall be amended to take into account the recommendations referred to in paragraph 4. Depending on the impact of the adjustment, the revised programme may be approved by the Commission.

6. In cooperation and consultation with the Commission and the relevant agencies in accordance with their competence, as applicable, resources under the programme may be reallocated with the aim of addressing recommendations, as referred to in paragraph 4 that have financial implications.

7. Member States ~~may shall in particular~~ pursue the actions eligible for higher co-financing as listed in Annex IV. In the event of unforeseen or new circumstances or in order to ensure the effective implementation of funding, the Commission shall be empowered to adopt delegated acts in accordance with Article 32 to amend the list of actions eligible for higher co-financing as listed in Annex IV.

AT: (Comments):

AT does not oppose to these changes.

CZ: (Comments):

The CZ supports this proposal.

FR: (Drafting):

7. Member States ~~may shall in particular~~ pursue the actions eligible for higher co-financing as listed in Annex IV. In the event of unforeseen or new circumstances or in order to ensure the effective implementation of funding, the Commission shall be empowered to adopt ~~delegated~~ **implementing** acts in accordance with Article ~~32~~ **33** to amend the list of actions eligible for higher co-financing as listed in Annex IV.

IT: (Comments):

Support

PT: (Comments):

PT strongly supports this change and considers it fundamental in the final version to be adopted for the current Regulation. The actions listed in Annex III must be considered as indicative, and not as exclusive.

SE: (Comments):

Sweden can accept the amendment made by the Presidency.

8. Whenever a Member State decides to implement *new* projects with or in a third country with the support of the Fund, the Member State concerned shall *inform* ~~consult~~ the Commission prior to the approval ~~start~~ of the project.

AT: (Comments):

AT does not oppose to the changes.

DE: (Comments):

Clarification is needed regarding the wording “approval”. Otherwise the phrasing could cause misunderstandings; e.g. that the Commission would need to approve projects in third countries.

ES: (Comments):

The Kingdom of Spain would prefer to “*inform*” prior to the start of the project instead of “*prior to the approval*”.

FI: (Comments):

We would see "to consult" as a more meaningful wording here as some kind of "cross-checking" seems to be needed to make sure that the implemented measures are coherent with the Fund objectives and the general policy aims and that there does not occur unnecessary overlapping with other similar actions. We don't see this compromising the autonomy and capacity of a MS for maneuvers in third countries but merely as a contributor to EU added value.

IT: (Comments):

Support

SE: (Drafting):

8. Whenever a Member State decides to implement **new** projects with or in a third country with the support of the Fund, the Member State concerned shall **consult ~~inform~~** the Commission prior to the start of the project.

SE: (Comments):

Sweden cannot accept the amendments made by the Presidency and strongly advocates the reinsertion of “consult”. Especially when it comes to *new* projects in or with a third country it is of outmost importance to *consult* the Commission prior to the start of the project in order to avoid overlapping or the financing of measures that might fall outside of the scope of AMF.

9. Programming as referred to in Article 17(5) of Regulation EU) .../2021 [Common Provisions Regulation], shall be based on the types of intervention set out in Table 1 of Annex VI.

Article 14

Mid-term review

ES: (Comments):

The Kingdom of Spain supports the negotiation strategy of the Romanian Presidency in relation to the European Parliament’s position in article 13.

FR: (Comments):

Réserve d’examen.

Scrutiny reserve.

PT: (Comments):

Pertaining to **Arts. 8 (Budget), 11 (Budgetary Resources) and 14 (Mid Term Review)** - PT recalls written contributions on this matter, advocating

the attribution of clear priority, in terms of the budget available, to the National Programs, in detriment of the Thematic Facilities.

In this context, and bearing in mind the policy objectives set out by the European Commission above, the same results could be reached, with a significantly lower administrative burden, as well as with a clearly increased amount of transparency and predictability, if the following changes were made:

- The 40% of the financial allocation to be attributed, under the AMIF, to the Thematic Facilities (art. 7, n. 2, b)), should decrease to 30%;
- The remaining 10% of the financial allocation, coming from the Thematic Facilities (current proposal) should increase the 60% of the allocation for Shared Management / National Programs (art. 7, n. 2, a)).
- Nonetheless, these extra 10%, coming from the Thematic Facility, should be added to the 10% already left, under the European Commission's initiative, to be allocated in the context of the Mid Term Review – as foreseen in art.s 11 and 14 of the current Regulation proposal – which would now amount to 20% of budget left for the review taking place in 2024.

In case there is an agreement from the Presidency, from the European Commission, as well as that of the remaining Member States, on this proposal, the subsequent adjustments should be made to the following articles:

- Art. 8 (calculations over n. 2 a) and b));
- Art. 11 (calculations over n. 1 a) and b));

Art. 14.

1. In 2024, the Commission shall allocate to the programmes of Member States concerned the additional amount referred to in Article 11(1)(b) in accordance with the criteria referred to in paragraphs 1(b) to 5 of Annex I. Funding shall be effective for the period as of the calendar year 2025.

2. ~~If at least 10 % of the initial allocation of a programme referred to in Article 11(1)(a) has not been covered by payment applications submitted in accordance with Article [85] of Regulation (EU) .../2021 [Common Provisions Regulation], the Member State concerned shall not be eligible to receive the additional allocation for the programme referred to in paragraph 1.~~

AT: (Comments):

AT has a scrutiny reservation until the actual amounts and the allocation is clear.

See comment under Art. 11.

BG: (Comments):

We support the proposed deletion of the provision.

DE: (Comments):

This paragraph should be kept, see also comment to paragraph 11 (2).

FI: (Comments):

It should be made sure that the implementation is started in timely manner and an originally proposed limit of 10 or 5 % is purposeful in this respect. Especially if the use of operating support will be extended as it now seems, the proposed threshold should not cause too much trouble.

FR: (Comments):

Scrutiny reserve.

NL: (Comments):

Scrutiny reservation. If there are no criteria for allocation of the additional amount referred to under art. 11(1)(b) other than the criteria mentioned in paragraph 1(b) to 5 of Annex I what is the added value of the mid-term review?

For AMF, BMVI and ISF (not for the other ESI Funds) the CPR determines that a mid-term evaluation should be executed by MS and in the Fund specific regulations is determined that a mid-term review (with financial consequences) should take place. How do the evaluation and review relate to each other and is this not a duplication of work.

SE: (Drafting):

Whithout prejudice to paragraph 2a, if at least 10 % of the initial allocation of a programme referred to in Article 11(1)(a) has not been covered by payment applications submitted in accordance with Article [85] of Regulation (EU) .../2021 [Common Provisions Regulation], the Member State concerned shall not be eligible to receive the additional allocation for the programme referred to in paragraph 1. The Commission shall consult the Member States concerned.

2a. Paragraph 2 only applies where all regulatory framework serving as the basis for the programming period 2021-2027 have entered into force

by 1 January 2021.

SE: (Comments):

Sweden advocates an incentive based system when it comes to allocating the additional amounts after the mid term review and thus, the reinsertion of the text in the previous compromise proposal (5207/18)

Sweden welcomes some kind of safeguard clause (p.2a) as was suggested in the compromise proposal (5207/18) and discussed at the AMF-meeting on December 17th.

3. The allocation of the funds from the thematic facility as of 2025 shall, where appropriate, take into account the progress made in achieving milestones of the performance framework as referred to in Article [12] of Regulation (EU) .../2021 [Common Provisions Regulation] and identified implementation shortcomings.

FR: (Drafting):

3. The allocation of the funds from the thematic facility as of 2025 shall, ~~where appropriate,~~ take into account the **evolution of the overall migratory situation and, where appropriate,** progress made in achieving milestones of the performance framework as referred to in Article [12] of Regulation (EU) .../2021 [Common Provisions Regulation] and identified implementation shortcomings.

FR: (Comments):

We deem necessary to base the allocation of the thematic facility on the migratory situation, along with the performance framework.

Article 15

Specific actions

1. Specific actions are transnational or national projects in line with the objectives of this Regulation for which one, several or all Member States

may receive an additional allocation to their programmes.

FR: (Comments):

It is necessary to establish a non-exhaustive list for specific actions, in a new Annex for example.

2. Member States may in addition to their allocation calculated in accordance with Article 11(1), receive an additional amount, provided that it is earmarked as such in the programme and is used to contribute to the implementation of the objectives of this Regulation.

3. The funding shall not be used for other actions in the programme except in duly justified circumstances and as approved by the Commission through the amendment of the programme.

CZ: (Drafting):

3a The COM should be empowered to adopt delegated act setting up rules for transnational specific actions.

CZ: (Comments):

The CZ suggest to include this paragraph as the transnational specific actions in current period face troubles in implementation (especially eligibility rules and controls) based on the fact that no single rules exist and the MS have different rules for their projects.

[Article 16

Resources for the Union Resettlement [and Humanitarian Admission] Framework

DE: (Comments):

in brackets

1. Member States shall receive, in addition to their allocation calculated in accordance with Article 11(1)(a), a contribution of EUR **[10 000]** for

each resettled person in accordance with the targeted Union resettlement scheme. That contribution shall take the form of financing not linked to costs in accordance with Article {125} of the Financial Regulation.

ES: (Comments):

Even if the resettlement contribution is not fixed, the Kingdom of Spain considers that the estimation of 10.000€ is insufficient since it is well below its real cost. Thus, Spain upholds a substantive reservation pending CEAS negotiations.

FI: (Comments):

This article should be harmonized with the proposal for resettlement framework so that it takes into account also the national resettlement schemes. As resettlement is prioritized as "a safe and sustainable way" for humanitarian migration, even higher lump sums could be purposeful.

FR:(Drafting):

1. Member States shall receive, in addition to their allocation calculated in accordance with Article 11(1)(a), a contribution of EUR [10 000] for each resettled person in accordance with the targeted Union resettlement scheme, **notably according to its geographic priorities.** That contribution shall take the form of financing not linked to costs in accordance with Article [125] of the Financial Regulation.

FR: (Comments):

We support the fact of stressing the importance of the geographic priorities of resettlements.

PT: (Drafting):

1. Member States shall receive, in addition to their allocation calculated in accordance with Article 11(1)(a), a contribution of EUR **[20 000]** for each resettled person in accordance with the targeted Union resettlement scheme. That contribution shall take the form of financing not linked to costs in accordance with Article {125} of the Financial Regulation.

2. The amount referred to in paragraph 1 shall be allocated to the Member States through the amendment of their programme provided that the person in respect of whom the contribution is allocated was effectively resettled in accordance with the Union Resettlement [and Humanitarian Admission] Framework.

3. The funding shall not be used for other actions in the programme except in duly justified circumstances and as approved by the Commission through the amendment of the programme. FR: (Drafting): The funding shall not be used for other actions in the programme except in duly justified circumstances and as approved by the Commission through the amendment of the programme FR: (Comments): <i>MS should be able to use lump sums as a national cofinancing to projects financed under the national program</i>
4. Member States shall keep the information necessary to allow the proper identification of the resettled persons and of the date of their resettlement./
[Article 17 Resources to support the implementation of Regulation ../.. [Dublin Regulation] DE: (Comments): in brackets
1. A Member State shall receive, in addition to their allocation calculated in accordance with Article 11(1)(a), a contribution of EUR [[10 000]] for each applicant for international protection for whom that Member State becomes responsible as from when that Member State is in challenging circumstances as defined in Regulation (EU) ../.. [Dublin Regulation].

EL: (Drafting):

1. A Member State shall receive, in addition to their allocation calculated in accordance with Article 11(1)(a), a contribution of EUR **[[25 000]]** for each applicant for international protection for whom that Member State becomes responsible as from when that Member State is in challenging circumstances as defined in Regulation (EU) ../.. [Dublin Regulation].

EL: (Comments):

The amount to be attributed to the Lump Sums must increase to 25.000 euros. The reasons are associated with the life costs..

ES: (Comments):

Even if the resettlement contribution is not fixed, the Kingdom of Spain considers that the estimation of 10.000€ is insufficient since it is well below its real cost. Thus, Spain upholds a substantive reservation pending CEAS negotiations.

PT: (Drafting):

1. A Member State shall receive, in addition to their allocation calculated in accordance with Article 11(1)(a), a contribution of EUR **[[20 000]]** for each applicant for international protection for whom that Member State becomes responsible as from when that Member State is in challenging circumstances as defined in Regulation (EU) ../.. [Dublin Regulation].

PT: (Comments):

Portugal considers that the amount to be attributed to the Lump Sums must increase to 20.000euros. The reasons are associated with inflation, with the increased life costs and with the experience felt in the current programming period.

2. A Member State shall receive, in addition to their allocation calculated in accordance with Article 11(1)(a), a contribution of EUR **[[10 000]]** for each applicant for international protection allocated to that Member State who is above the benefitting Member State's fair share.

EL: (Drafting):

2. A Member State shall receive, in addition to their allocation calculated in accordance with Article 11(1)(a), a contribution of EUR **[[25 000]]** for each applicant for international protection allocated to that Member State who is above the benefitting Member State's fair share

EL: (Comments):

The amount to be attributed to the Lump Sums must increase to 25.000 euros. The reasons are associated with the life costs.

PT: (Drafting):

2. A Member State shall receive, in addition to their allocation calculated in accordance with Article 11(1)(a), a contribution of EUR **[[20 000]]** for each applicant for international protection allocated to that Member State who is above the benefitting Member State's fair share.

PT: (Comments):

Portugal considers that the amount to be attributed to the Lump Sums must increase to 20.000euros. The reasons are associated with inflation, with the increased life costs and with the experience felt in the current programming period.

3. A Member State referred to in paragraphs 1 and 2 shall receive an additional contribution of EUR **[[10 000]]** per applicant who has been granted international protection for the implementation of integration measures.

EL: (Drafting):

A Member State referred to in paragraphs 1 and 2 shall receive an additional contribution of EUR **[[25 000]]** per applicant who has been granted international protection for the implementation of integration measures.

EL: (Comments):

The amount to be attributed to the Lump Sums must increase to 25.000 euros. The reasons are associated with the increased life costs.

PT: (Drafting):

3. A Member State referred to in paragraphs 1 and 2 shall receive an additional contribution of EUR **[[20 000]]** per applicant who has been granted international protection for the implementation of integration measures.

PT: (Comments):

Portugal considers that the amount to be attributed to the Lump Sums must increase to 20.000euros. The reasons are associated with inflation, with the increased life costs and with the experience felt in the current programming period.

4. A Member State referred to in paragraphs 1 and 2 shall receive an additional contribution of EUR **[[10 000]]** per person for whom the Member State can establish on the basis of the updating of the data set referred to in Article 11(d) of Regulation (EU) ... [Eurodac Regulation] that the person has left the territory of the Member State, on either a compulsory or voluntarily basis in compliance with a return decision or a removal order.

EL: (Drafting):

A Member State referred to in paragraphs 1 and 2 shall receive an additional contribution of EUR **[[20 000]]** per person for whom the Member State can establish on the basis of the updating of the data set referred to in Article 11(d) of Regulation (EU) ... [Eurodac Regulation] that the person has left the territory of the Member State, on either a compulsory or voluntarily basis in compliance with a return decision or a removal order.

EL: (Comments):

The amount to be attributed to the Lump Sums must increase to 25.000 euros. The reasons are associated with the increased life costs.

PT: (Drafting):

4. A Member State referred to in paragraphs 1 and 2 shall receive an additional contribution of EUR **[[20 000]]** per person for whom the Member State can establish on the basis of the updating of the data set referred to in Article 11(d) of Regulation (EU) ... [Eurodac Regulation] that the person

has left the territory of the Member State, on either a compulsory or voluntarily basis in compliance with a return decision or a removal order.

PT: (Comments):

Portugal considers that the amount to be attributed to the Lump Sums must increase to 20.000euros. The reasons are associated with inflation, with the increased life costs and with the experience felt in the current programming period.

5. A Member State shall receive, in addition to its allocation calculated in accordance with Article 11(1)(a), a contribution of EUR [[500]] for each applicant of international protection transferred from one Member State to another, for each applicant transferred pursuant to point (c) of the first paragraph of Article 34(i) of Regulation (EU) ../... [Dublin Regulation] and, where applicable, for each applicant transferred pursuant to point (g) of Article 34 (j) of Regulation (EU) ../.. [Dublin Regulation].

EL: (Drafting):

A Member State shall receive, in addition to its allocation calculated in accordance with Article 11(1)(a), a contribution of EUR [[2.000]] for each applicant of international protection transferred from one Member State to another, for each applicant transferred pursuant to point (c) of the first paragraph of Article 34(i) of Regulation (EU) ../... [Dublin Regulation] and, where applicable, for each applicant transferred pursuant to point (g) of Article 34 (j) of Regulation (EU) ../.. [Dublin Regulation].

EL: (Comments):

The amount to be attributed for each applicant of international protection transferred from one Member State to another, must increase to 25.000 euros.

6. The amounts referred to in this Article shall take the form of financing not linked to costs in accordance with Article {125} of the Financial Regulation.

7. The additional amounts referred to in paragraphs 1 to 5 shall be allocated to the Member States in their programmes provided that the person in respect of whom the contribution is allocated was, as applicable, effectively transferred to a Member State, effectively returned or registered as an

applicant in the Member State responsible in accordance with Regulation (EU) ... [Dublin Regulation].

8. This funding shall not be used for other actions in the programme except in duly justified circumstances and as approved by the Commission through the amendment of the programme./

Article 18

Operating support

ES: (Comments):

The Kingdom of Spain welcomes the increase of the percentage foreseen in article 15.

FI: (Comments):

We welcome the opportunity to use the operating support even for the measures of legal migration and integration as well as the general increase to 20% of the National Programme.

1. Operating support is a part of a Member State's allocation which may be used as support to the public authorities responsible for accomplishing the tasks and services which constitute a public service for the Union;

2. A Member State may use up to ~~10~~ **20** % of the amount allocated under the Fund to its programme to finance operating support under objectives in Article 3(2)~~(a) and (c)~~.

AT: (Comments):

AT is in favour of the changes.

BG: (Comments):

We express the opinion that further increase of the share for operating support is necessary in view of the specificities of the fund.

CZ: (Comments):

The CZ supports this option.

DE: (Comments):

Scrutiny reservation: There must be high EU added value, especially since the operating support is supposed to be 100% financed. 100% EU funding must remain the absolute exception.

EE: (Comments):

EE welcomes the increase of the operating support to 20%.

EL: (Comments):

We welcome the rise of the percentage from 10% to 20%, as well as the rephrase of the paragraph and the inclusion in operating support of all the objectives in Article 3(2)

HR: (Comments):

HR supports the increase of the rate for operating support from 10 to 20%. The increase of the amount available for operating support will help in maintaining appropriate reception and accommodation standards of third-country nationals.

IT: (Comments):

Support

MT: (Comments):

We look favourably at the proposal for operating support under the AMF however, given that the sector is very volatile and the needs may change drastically within a short period of time, the introduction of a maximum threshold is considered as too restrictive. In the spirit of flexibility, we believe that there is scope to leave the decision on the amount to be used for operating support at the discretion of the Member State. However, at the very least, Malta considers that the allocated amount for operating support should be maintained at the same level as that under the current programming period within the ISF Regulation. If this is not considered to be feasible, an alternative option could be to raise this level to the one in the current ISF Regulation for those Member States whose national allocation would amount to less than 50 million Euros.

PT: (Drafting):

2. A Member State may use up to ~~40~~ 30 % of the amount allocated under the Fund to its programme to finance operating support under objectives in Article 3(2).

PT: (Comments):

Portugal welcomes the spirit of the proposal set by the Presidency, by way of increasing the percentage of maximum allocation for the Operating Support, but maintains its conviction that this **percentage should still be increase from the 10% indicated by the European Commission to a minimum of 30%**;

Portugal supports that the operational support should also be applicable to the Integration area (including art. 18, n° 2, parag. (b) of the n° 2 of art. 3)

SE: (Comments):

Sweden supports the increase to 20% and that the operating support also covers upgrading of IT-systems and operating support of IT-systems as indicated in Annex VII.

Furthermore, Sweden very much welcomes the Romanian Presidency's amendment which implies that that the legal migration/integration related objective in art. 3.2(b) is covered by the operating support as well.

Explanation: Several agencies in Sweden (such as the Swedish Migration Agency, the Swedish Public Employment Agency etc) has a clear mandate to focus on early integration measures. These need to be coordinated and therefore it is very helpful that the operating support covers the integration objective as well.

3. The Member States using operating support shall comply with the Union *acquis* on asylum and return.

4. Member States shall justify in the programme and in the annual performance report as referred to in Article 30 the use of operating support to achieve the objectives of this Regulation. Before the approval of the programme, the Commission shall, ~~with the European Union Agency for Asylum and the European Border and Coast Guard Agency in line with Article 13,~~ assess the baseline situation in the Member States which have indicated their intention to use operating support. The Commission shall take into account the information provided by those Member States and, where relevant, the information available in the light of the monitoring exercises, as carried out in accordance with Regulation (EU) ... [EUAA Regulation] and Regulation (EU) No 1053/2013, which are within the scope of this Regulation.

BG: (Comments):

We support the modification of the provision.

FR: (Drafting):

4. Member States shall justify in the programme ~~and in the annual performance report as referred to in Article 30~~ the use of operating support to ~~achieve~~ **contribute to** the objectives of this Regulation. Before the approval of the programme, the Commission shall, ~~with the European Union Agency for Asylum and the European Border and Coast Guard Agency in line with Article 13,~~ assess the baseline situation in the Member States which have indicated their intention to use operating support. The Commission shall take into account the information provided by those Member States and, where relevant, the information available in the light of the monitoring exercises, as carried out in accordance with Regulation (EU) ... [EUAA Regulation] and Regulation (EU) No 1053/2013, which are within the scope of this Regulation.

IT: (Comments):

Support

5. Operating support shall be concentrated on specific tasks and services as laid down in Annex VII.

6. To address unforeseen or new circumstances or to ensure the effective implementation of funding, the Commission shall be empowered to adopt delegated acts in accordance with Article 32 to amend the list of specific tasks and services in Annex VII.

FR: (Drafting):

6. To address unforeseen or new circumstances or to ensure the effective implementation of funding, the Commission shall be empowered to adopt ~~delegated~~ **implementing** acts in accordance with Article ~~32~~ **33** to amend the list of specific tasks and services in Annex VII.

Section 3

Support and implementation under direct and indirect management

Article 18a

Eligible entities

AT: (Comments):

AT is in favour of the changes.

FR: (Comments):

These provisions should be applicable only to the direct and indirect management (section 3). For shared management, the eligible entities should be specified in each national programme.

1. The following entities may be eligible:

(a) legal entities established in any of the following countries:

(1) a Member State or an overseas country or territory linked to it;

(2) a third country associated to the Fund;

(3) a third country listed in the work programme under the conditions specified therein;

(b) any legal entity created under Union law or any international organisation.

2. Natural persons are not eligible.

3. Legal entities established in a third country are ~~exceptionally~~ eligible to participate where this is necessary for the achievement of the objectives of a given action.

DE: (Comments):

In Art. 6 para. 1 no. 3 "exceptionally" should be retained. Otherwise it would be possible to promote organisations in third countries in general. This contradicts the focus of the Fund.

ES: (Comments):

The Kingdom of Spain supports the suppression of the word “*exceptionally*” in paragraph 3. The proposed drafting will allow a more flexible range of actions in the future period of Fund application, without limiting Member States actions, and giving the necessary flexibility to the fund to react in any circumstance. If the term “*exceptionally*” remains in the text, it would be necessary to specify when the exceptional circumstances apply

FI: (Comments):

We see that the word "exceptionally" should be kept intact in this point.

FR: (Drafting):

3. *Legal entities established in a third country are exceptionally eligible to participate where this is necessary for the achievement of the objectives of a given action.*

4. *Legal entities participating in consortia of at least two independent entities, established in different Member States or in overseas countries or territories linked to those states or in third countries are eligible.*

Article 19

Scope

Support under this section ~~Union~~ shall be implemented either directly by the Commission in accordance with point (a) of Article 62(1) of **Regulation (EU, Euratom) 2018/1046** ~~the Financial Regulation~~, or indirectly in accordance with point (c) of that Article.

Article 20

Union actions

1. Union actions are transnational projects or projects of particular interest to the Union implemented in line with the objectives of this Regulation.

DE: (Comments):

The opinion of MS shall be taken into account when the COM decides about union actions.

2.	At the Commission's initiative, the Fund may be used to finance Union actions concerning the objectives of this Regulation as referred to in Article 3 and in accordance with Annex III.
3.	Union actions may provide funding in any of the forms laid down in Regulation (EU, Euratom) 2018/1046 the Financial Regulation in particular grants, prizes and procurement. They may also provide financing in the form of financial instruments within blending operations. DE: (Comments): We would like the COM to provide written examples for the possible use of financial instruments within blending operations. Who can be the final recipients? (See also information in fiche 48.)
4.	Grants implemented under direct management shall be awarded and managed in accordance with [Title VIII] of Regulation (EU, Euratom) 2018/1046 the Financial Regulation .
5.	The evaluation committee assessing the proposals may be composed of external experts.
6.	Contributions to a mutual insurance mechanism may cover the risk associated with the recovery of funds due by recipients and shall be considered a sufficient guarantee under Regulation (EU, Euratom) 2018/1046 the Financial Regulation . The provisions laid down in [Article X of] Regulation (EU) ... [successor of the Regulation on the Guarantee Fund] shall apply.
Article 21	
European Migration Network	

1. The Fund shall support the European Migration Network and provide the financial assistance necessary for its activities and its future development.
2. The amount made available for the European Migration Network under the annual appropriations of the Fund and the work programme laying down the priorities for its activities shall be adopted by the Commission, after approval by the Steering Board in accordance with Article 4(5)(a) of Decision 2008/381/EC (as amended). The decision of the Commission shall constitute a financing decision pursuant to Article [110] of <u>Regulation (EU, Euratom) 2018/1046</u> the Financial Regulation . To ensure the timely availability of resources, the Commission may adopt the work programme for the European Migration Network in a separate financing decision.
3. Financial assistance provided for the activities of the European Migration Network shall take the form of grants to the national contact points referred to in Article 3 of Decision 2008/381/EC and procurements as appropriate, in accordance with <u>Regulation (EU, Euratom) 2018/1046</u> the Financial Regulation .
Article 22 Blending operations AT: (Comments): AT is in favour of the recital to be added on blending operations. DE: (Comments): See comment on Article 20 para.3. EL: (Comments):

It is not clear what added value blending operations would bring in the area of asylum and migration. The Union's policy in the area of asylum and migration should not be reliant on private-sector financing.
Blending operations ¹³ decided under this Fund shall be implemented in accordance with the [InvestEu regulation] and Title X of Regulation (EU, Euratom) 2018/1046 the Financial Regulation .
Article 23 Technical assistance at the initiative of the Commission
The Fund may support technical assistance measures implemented at the initiative of, or on behalf of, the Commission. Those measures may be financed at the rate of 100%.
Article 24 Audits
Audits on the use of the Union contribution carried out by persons or entities, including by other than those mandated by the Union institutions or bodies, shall form the basis of the overall assurance pursuant to Article 127 of Regulation (EU, Euratom) 2018/1046 [Regulation on the financial rules applicable to the general budget of the Union] .
Article 25 Information, communication and publicity

¹³ *A recital will elaborate on the voluntary character of blending operations.*

ES: (Comments):

The Kingdom of Spain would like a horizontal drafting of this article in the ISF, AMF and BMVI. The previous Presidency proposal that made reference to Council Decision 2013/488/EU seemed suitable. In any case, Spain supports the Commission point of view making reference, independently of article 25, to the EU and national framework on the matter.

1. The recipients 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 and proportionate targeted information to multiple audiences, including the media and the public, **except where it is restricted due to its classified or confidential nature, particularly concerning security, public order and the protection of personal data, according the applicable law.**

AT: (Comments):

AT is in favour of the changes.

BG: (Comments):

We support the modification of the provision.

CZ: (Comments):

The CZ supports this option.

DE: (Comments):

Germany supports the new wording, since it clarifies the matter.

EE: (Comments):

EE supports the proposed wording of this paragraph. However, this mitigation should be extended to shared management, so **EE proposes to move this**

article to the CPR as proposed by the PRES during the 21 January ISF WG.

FR: (Drafting):

1. The recipients 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 and proportionate targeted information to multiple audiences, including the media and the public.~~ **except where it is restricted due to its classified or confidential nature, or its sensitivity particularly concerning security, public order and the protection of personal data, according the applicable law.**

Information, communication and publicity do not apply to lump sum received for special case (resettlement, humanitarian admission, relocation or transfers).

FR: (Comments):

Considering confidentiality or sensitivity of several projects financed by this fund, obligations related to information, communication and publicity should be substantially lightened both for managing authority and beneficiaries, and aligned to what is done for 2014-2020 AMIF programmes.

It is especially the case for communication on objectives and results, through internet, social network or other media.

Furthermore, lump sum related to special case must remain free of use and publicity should not applied to them (as it is the case for AMIF).

IT: (Comments):

Support

PT: (Comments):

Portugal supports this change.

2. The Commission shall implement information and communication actions relating to the Fund and its actions and results. Financial resources allocated to the Fund shall also contribute to the corporate communication on the political priorities of the Union, as far as they are related to the objectives of this Regulation.

Section 4

Support and implementation under shared,
direct and indirect management

Article 26

Emergency assistance

AT: (Comments):

AT is in favour of the changes in the whole article.

1. The Fund shall provide financial assistance to address urgent and specific needs in the event of an emergency situation resulting from one or more of the following:

(a) heavy migratory pressure in one or more Member States characterised by a large or disproportionate inflow of third-country nationals, which places significant and urgent demands on their reception and detention facilities, asylum and migration management systems and procedures;

ES: (Drafting):

(a) heavy migratory pressure in one or more Member States characterised by ~~a large or disproportionate~~ an inflow of third-country nationals, which places significant and urgent demands on their reception and detention facilities, asylum and migration management systems and procedures;

ES: (Comments):

The Kingdom of Spain supports the suppression of “*large or disproportionate*”, since this term is not included in article 2. The adjectives “*large and disproportionate*” are difficult to define and may hinder the application of emergency assistance.

FI: (Comments):

The definition should be kept flexible enough to be able to address and counter different kinds of situations and potentially new migration flows causing sudden pressure for the asylum and migration management systems.

(b) ***an event of mass influx of displaced persons*** ~~the implementation of temporary protection mechanisms within the meaning of Directive 2001/55/EC¹⁴;~~

FR: (Drafting):

(b) ***an event of mass influx of displaced persons*** ~~the implementation of temporary protection mechanisms within the meaning of Directive 2001/55/EC¹⁵;~~

FR: (Comments):

It should be necessary to add a definition of “mass influx of displaced persons” under Article 2

(c) heavy migratory pressure in third countries, including where persons in need of protection may be stranded due to political developments or conflicts, notably where it might have an impact on migration flows towards the EU.

¹⁴ 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).

¹⁵ 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).

2. Emergency assistance may take the form of grants awarded directly to the decentralised agencies.

ES: (Comments):

The Kingdom of Spain is of the opinion that the order of paragraph 2 and 3 of this article should be inverted.

3. Emergency assistance may be allocated to Member States' programmes in addition to their allocation calculated in accordance with Article 11(1) and Annex I, provided that it is earmarked as such in the programme. This funding shall not be used for other actions in the programme except in duly justified circumstances and as approved by the Commission through the amendment of the programme.

ES: (Comments):

The Kingdom of Spain is of the opinion that the order of paragraph 2 and 3 of this article should be inverted.

4. Grants implemented under direct management shall be awarded and managed in accordance with [Title VIII] of *Regulation (EU, Euratom) 2018/1046* the Financial Regulation.

5. The Commission shall regularly inform Member States about the available financial means for emergency assistance and the types of action which may be eligible.

BG: (Comments):

We support the modification of the provision.

DE: (Comments):

Germany supports this new wording; MS would be supported in their decision process whether to apply for emergency assistance or not.

EL: (Comments):

We would like to ask for further clarifications, specifically on how the Commission will inform the m-s about the available financial means and also about the eligible types of action.

ES: (Comments):

The Kingdom of Spain supports the Presidency's proposal

IT: (Comments):

Support

PT: (Comments):

Portugal supports this change.

Article 27

Cumulative, complementary and combined funding

1. An action that has received a contribution under the Fund may also receive a contribution from any other Union programme, including Funds under shared management, provided that the contributions do not cover the same costs. The rules of each contributing Union programme shall apply to its respective contribution to the action. The cumulative funding shall not exceed the total eligible costs of the action and the support from the different Union programmes may be calculated on a pro-rata basis in accordance with the documents setting out the conditions for support.

2. Actions awarded a seal of Excellence certification, or which comply with the following cumulative comparative conditions:

(a) they have been assessed in a call for proposals under the instrument;
(ba) they comply with the minimum quality requirements of that call for proposals;
(cb) they may not be financed under that call for proposals due to budgetary constraints.
may receive support from the European Regional Development Fund, the Cohesion Fund, the European Social Fund+ or the European Agricultural Fund for Rural Development, in accordance with paragraph 5 of Article [67] of Regulation (EU) ../.. [Common Provisions Regulation] and Article [8] or Regulation (EU) ../.. [Financing, management and monitoring of the Common Agricultural Policy], provided that such actions are consistent with the objectives of the programme concerned. The rules of the Fund providing support shall apply.
Section 5
Monitoring, Reporting and evaluation
sub section 1
Common Provisions
Article 28
Monitoring and reporting
1. In compliance with its reporting requirements pursuant to Article [43(3)(h)(i)(iii)] of Regulation (EU, Euratom) 2018/1046 the Financial

~~Regulation~~, the Commission shall present to the European Parliament and the Council information on performance in accordance with Annex V.

2. The Commission shall be empowered to adopt delegated acts in accordance with Article 32 to amend Annex V in order to make the necessary adjustments to the information on performance to be provided to the European Parliament and the Council.

DE:

(Comments):

The opinion of the MS should be taken into account.

FR: (Drafting):

2. The Commission shall be empowered to adopt ~~delegated~~ **implementing** acts in accordance with Article 32 to amend Annex V in order to make the necessary adjustments to the information on performance to be provided to the European Parliament and the Council. **If a new and strictly necessary indicator is created, it will start to apply in the first accounting year following the year of adoption of the implementing ted act.**

FR: (Comments):

We would like to insure the indicators used in the report will not be used to stress some aspects of the implementation of the Regulation that were not initially foreseen.

3. The indicators to report on progress of the Fund towards the achievement of the objectives of this Regulation are set in Annex VIII. For output indicators, baselines shall be set at zero. The milestones set for 2024 and targets set for 2029 shall be cumulative.

DE: (Comments):

Output indicators should not be set at zero, but should instead also take into account the existing stock of migrants up to a certain time of stay (e.g. up to 3 years). This is important for countries that have encountered a large influx of migrants in a previous period and are still facing challenges covered by

AM(I)F programmes

FR: (Drafting):

3. The indicators to report on progress of the Fund towards the achievement of the objectives of this Regulation are set in Annex VI. For output indicators, baselines shall be set at zero. ~~The milestones set for 2024 and targets set for 2029 shall be cumulative.~~

FR: (Comments):

We are not in favour of multiplying indicators, notably performance indicators tending to add-up through the whole MFF period.

4. The performance reporting system shall ensure that data for monitoring programme implementation and results are collected efficiently, effectively, and in a timely manner. To that end, proportionate reporting requirements shall be imposed on recipients of Union funds and where relevant Member States.

DE: (Comments):

In order to ensure efficiency, data collection has not necessarily to be done the same way in all countries, but should take into account the extent of the respective measure and the size of the targeted group

FR: (Drafting):

4. The performance reporting system shall ensure that **reliable** data for monitoring programme implementation and results are collected efficiently, effectively, and in a timely manner. To that end, **data collected by EUROSTAT under Annex V shall be submitted to Member States, and if it is possible** proportionate reporting requirements shall be imposed on recipients of Union funds and where relevant Member States.

FR: (Comments):

We deem necessary, when relevant, to compare some of the data EUROSTAT could transfer with alternative sources of information.

5. In order to ensure effective assessment of the progress of the Fund towards the achievement of its objectives, the Commission shall be empowered to adopt delegated acts in accordance with Article 32 to amend Annex VIII to review and complement the indicators where necessary and to supplement this Regulation with provisions on the establishment of a monitoring and evaluation framework, including for project information to be provided by the Member States. **Any amendment to Annex VIII shall only start to apply in the first accounting year following the year of adoption of the delegated act.**

AT: (Comments):

AT is in favour of the changes.

BG: (Comments):

We support the modification of the provision.

DE: (Comments):

Germany supports the additional wording.

ES: (Comments):

The Kingdom of Spain welcomes the new drafting proposal of the Romanian Presidency for article 28.5.

FR: (Drafting):

. In order to ensure effective assessment of the progress of the Fund towards the achievement of its objectives, the Commission shall be empowered to adopt ~~delegated~~ **implementing** acts in accordance with Article 32 to amend Annex VIII to review and complement the indicators ~~where~~ **if it is strictly** necessary and to supplement this Regulation with provisions on the establishment of a monitoring and evaluation framework, including for project information to be provided by the Member States. **Any amendment to Annex VIII shall only start to apply in the first accounting year following the year of adoption of the implementing act.**

IT: (Comments):

Support

PT: (Comments):

Portugal supports this change.

Article 29

Evaluation

1. The Commission shall carry out a mid-term and a retrospective evaluation of this Regulation, including the actions implemented under the Fund.

2. The mid-term and the retrospective evaluation shall be carried out in a timely manner to feed into the decision-making process *in accordance with the timeline set out in Article 40 of Regulation (EU) No .../... [CPR]*.

sub section 2

rules for shared management

Article 30

Annual performance reports

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 report submitted in 2023 shall cover the implementation of the programme in the period to 30 June 2022.

DE: (Comments):

In order to reduce administrative burden, the number of required information should be reduced; only necessary information should be included in the performance reports

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;

(c) the complementarity between the actions supported by the Fund and 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;

(e) the implementation of communication and visibility actions;

(f) the fulfilment of the applicable enabling conditions and their application throughout the programming period;

ES: (Comments):

The Kingdom of Spain introduces a scrutiny reservation till a final decision on the matter is taken at the CPR discussion.

FR: (Drafting):

~~(f) — the fulfilment of the applicable enabling conditions and their application throughout the programming period;~~

FR: (Comments):

Enabling conditions should not apply to this fund since they don't exist for AMIF 2014-2020. Indeed, they would not introduce the essential simplification wished both by European commission and member states. In particular, the one concerning state aids is not relevant for this fund since it doesn't target private beneficiaries.

(g) the number of persons resettled with the help of the Fund in line with the amounts referred to in Article 16(1);

(h) the number of applicants for or beneficiaries of international protection transferred from one Member State to another in line with Article 17.

ES: (Comments):

The Kingdom of Spain upholds a substantive reservation pending negotiation on CEAS.

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 examination ~~advisory~~ procedure referred to

in Article 33(32).

AT: (Comments):

AT is in favour of the changes.

DE: (Comments):

Germany supports that the examination procedure shall be used in this case.

SE: (Comments):

Sweden welcomes the suggested amendment (examination procedure instead of advisory precedure).

Article 31

Monitoring and reporting

1. Monitoring and reporting in accordance with Title IV of Regulation (EU) .../... [Common Provisions Regulation] shall be based on the types of intervention set out in Tables 1, 2 and 3 in Annex VI. To address unforeseen or new circumstances or to ensure the effective implementation of the funding, the Commission shall be empowered to adopt delegated acts to amend the types of intervention in accordance with Article 32.

FR: (Drafting):

1. Monitoring and reporting in accordance with Title IV of Regulation (EU) .../... [Common Provisions Regulation] shall be based on the types of intervention set out in Tables 1, 2 and 3 in Annex VI. To address unforeseen or new circumstances or to ensure the effective implementation of the funding, the Commission shall be empowered to adopt ~~delegated~~ **implementing** acts to amend the types of intervention in accordance with Article ~~32~~ **33. Except for correcting material error, the modification shall apply only for projects selected after the adoption of the modification.**

2. These indicators **set in Annex VIII** shall be used in accordance with Articles 12(1), 17 and 37 of Regulation (EU) .../2021 [Common Provisions Regulation].

AT: (Comments):

AT is in favour of the changes.

DE: (Comments):

Does this also apply to the indicators according annex V?

If not, how shall indicators according annex V be used?

CHAPTER III

TRANSITIONAL AND FINAL PROVISIONS

Article 32

Exercise of the delegation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.

2. The power to adopt delegated acts referred to in Articles 13, 18, 28 and 31 shall be conferred on the Commission until 31 December 2028.

3. The delegation of powers referred to in Articles 13, 18, 28 and 31 may be revoked at any time by the European Parliament or by the Council. A decision of revocation shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already

in force.

4. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement on Better Law-Making of 13 April 2016.

5. As soon as it adopts a delegated act, the Commission shall simultaneously notify the European Parliament and to the Council thereof.

6. A delegated act adopted pursuant to Articles 13, 18, 28 and 31 shall enter into force only if neither the European Parliament nor the Council has expressed an objection within two months of being notified of it or if, before the expiry of that period, they have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or the Council.

Article 33

Committee procedure

AT: (Comments):

AT is in favour of the changes made in the article.

ES: (Comments):

The Kingdom of Spain supports the new drafting proposed by the Presidency taking into account the changes introduced in article 9.

1. The Commission shall be assisted by the Coordination Committee for the Asylum, ~~and~~ Migration ***and Integration*** Fund, the Internal Security Fund and the Border Management and Visa Instrument. That Committee shall be a Committee within the meaning of Regulation (EU) No 182/2011.

PT: (Comments):

Portugal supports this change.

2. Where reference is made to this paragraph, Article 4 of Regulation (EU) No 182/2011 shall apply.

FR: (Drafting):

~~Where reference is made to this paragraph, Article 4 of Regulation (EU) No 182/2011 shall apply.~~

FR: (Comments):

We prefer referring to examination procedures instead of consultation procedures

NL: (Drafting):

2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

3. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

DE: (Comments):

Germany supports this addition.

NL: (Drafting):

3. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply. Where reference is made to this paragraph, Article 8 of Regulation (EU) No 182/2011, in conjunction with Article 5 thereof, shall apply.

SE: (Comments):

Sweden welcomes the amendment. Consequently, the scrutiny reservation on paragraph 3 is lifted.

~~3. Where the Committee delivers no opinion, the Commission shall not adopt the draft implementing act. This shall not apply to the implementing act referred to in Article 30(4).~~

FR: (Drafting):

3. Where the Committee delivers no opinion, the Commission shall not adopt the draft implementing act. ~~This shall not apply to the implementing act referred to in Article 30(4).~~

FR: (Comments):

We prefer referring to examination procedures with a no-opinion clause

Article 34

Transitional provisions

1. This Regulation shall not affect the continuation or modification of the actions concerned under the Asylum, Migration and Integration Fund for the period 2014-2020 established by Regulation (EU) No 516/2014, which shall continue to apply to the actions concerned until their closure.

2. The financial envelope for the Fund may also cover technical and administrative assistance expenses necessary to ensure the transition between the Fund and the measures adopted under its predecessor, the Asylum, Migration and Integration Fund established by Regulation (EU) No 516/2014.

Article 35

Entry into force and application

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

It shall apply from 1 January 2021.

This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaties.

Done at Strasbourg,

For the European Parliament For the Council

The President The President

[ANNEX I]

[Criteria for the allocation of funding to the programmes under shared management]

LV: (Comments):

Latvia does not support the distribution key specified in Annex I of the proposal for regulation establishing Border management and visa instrument. We believe that the distribution key is unfair to countries with large external land and sea borders and a low threat factor. Namely, a coefficient of 0.5, which is 10 and 16 times smaller than the coefficient for a border with a high and critical risk, is applied for the borders with a low threat. Even for a medium-threat border, the coefficient is 6 times smaller. At the same time, the needs and requirements for the protection of the external borders in places with low risks are not 10 or 16 times smaller. In order to ensure the fairness and proportionality of the distribution key, Latvia considers it necessary to set the coefficient for low threat borders at a limit of not less than 1.

PT: (Comments):

As regards to **Annexes I, V and VIII**, Portugal reserves its position to further discussions of the Ad Hoc Working Party on its content and extent.

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 5 000 000 from the Fund at the start of the programming period only;

EL: (Drafting):

Each Member State shall receive an amount of at least 10% of the Program from the Fund at the start of the programming period only. In case of migratory flows and/or increased reception and integration challenges the amount can be at least doubled.

EL: (Comments):

We opt for a higher initial allocation of funds compared to the fixed proposed amount of 5.000.000, and the migratory flows, the increased reception and integration challenges have to be taken into account.

ES: (Comments):

The Kingdom of Spain considers that the pre-funding is very low and may endanger the Fund implementation.

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

ES: (Comments):

The Kingdom of Spain proposes a new criteria distribution.

– 30 % for asylum;

ES: (Drafting):

40% for asylum

– 30 % for legal migration and integration;

– 40 % for countering irregular migration including returns.

ES: (Drafting):

30% for irregular migration including returns

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/EU ¹⁶ ;
–	Any third-country national or stateless person enjoying temporary protection within the meaning of Directive 2001/55/EC ¹⁷
(b)	60 % in proportion to the number of third-country nationals or stateless persons who have applied for international protection.
HR: (Comments):	
Criteria (percentages) for allocation of funds must reflect the actual burden taken on by Member States. We believe that a greater percentage of funds should be allocated according to the number of persons who have applied for international protection and a lower percentage based on the number of persons to whom that status has already been granted.	
(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.
3.	The following criteria in the area of legal migration and integration will be taken into account and shall be weighted as follows:

¹⁶ 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).

¹⁷ 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).

(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.
EE: (Comments): We would like to point out that for EE the criteria for the allocation concerning the 60% in proportion to the number of third-country national who have obtained a first residence permit is problematic. Estonia is among the MSs who is issuing the smallest number of first residence permits while the number of third-country nationals staying legally in the country is quite remarkable. For the majority of third-country nationals, who have stayed and worked in a country less than a year, has been issued a visa and not a residence permit (which is a base for allocation criteria). Therefore, we are in favor of the exclusion which does not count among the first residence permits those permits that have been issued for the aim of working and are valid less than a year. In this way, the statistical figures of other MSs would be more equal with the numbers of Estonia, especially of those countries where the number of residence permits with the validity less than a year is remarkable.
SI: (Comments): We have a problem with the allocation of resources: we have to increase the national envelope and replace % in Annex I 3a and b: 60% for valid residence permits and 40% for first residence permits.
(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/EC ¹⁸ or when applicable the Directive (EU) 2016/801 ¹⁹ ;

¹⁸ 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).

– Third-country nationals admitted for purposes of scientific research in accordance with Council Directive 2005/71/EC²⁰ or when applicable the Directive (EU) 2016/801.
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% 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% 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.
5. For initial allocation the reference figures shall be the latest annual statistical data produced by the Commission (Eurostat) covering the preceding three calendar years 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 the latest annual statistical data produced by the Commission (Eurostat) covering the preceding three calendar years 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

¹⁹ 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).

²⁰ 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).

possible.

BG: (Comments):

The provision of a fair distribution of funds with due regard of the situation in the Member States is particularly important to us. We consider that in the initial allocation reference figures should cover the entire financial period of 2014-2020. Given the dynamics of the situation in the EU in the asylum and migration, this approach will better reflect the actual situation in the Member States.

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.¹

ANNEX II

Implementation measures

AT: (Comments):

AT is fine with the changes made in this Annex, but would like to refer to the comments regarding external dimension made at the beginning of the document.

ES: (Comments):

The Kingdom of Spain considers that references to early integration may be deleted. Spain upholds the complementarity between ESF and AMIF, their synergies and the necessity to avoid duplicities.

SE: (Comments):

Sweden retains its scrutiny reservation on the entire Annex II given that it is linked to article 3 where the objective concerning increased solidarity and

improved responsibility sharing has been removed. Sweden strongly advocates the reinsertion of the objective, as it stands in the current AMIF and in art 80 TFEU.

1. The Fund shall contribute to the specific objective set out in Article 3(2)(a) by focusing on the following implementation measures:

(a) ensuring a uniform application of the Union *acquis* and of the priorities related to the Common European Asylum System;

(b) supporting the capacity of Member States' asylum systems as regards infrastructures and services where necessary;

(c) enhancing solidarity and responsibility-sharing between the Member States, in particular towards those most affected by migratory flows, as well as providing support to Member States contributing to solidarity efforts;

(d) enhancing solidarity and cooperation with third countries affected by migratory flows, including through resettlement and other legal avenues to protection in the Union as well as partnership and cooperation with third countries for the purpose of managing migration.

ES: (Drafting):

*enhancing solidarity and cooperation with third countries affected by migratory flows, including through resettlement and other legal avenues to protection in the Union as well as partnership and cooperation with third countries for the purpose of managing migration **including its external dimension.***

ES: (Comments):

The Kingdom of Spain would like to reintroduce the alternative drafting of the previous Presidency.

2. The Fund shall contribute to the specific objective set out in Article 3(2)(b), by focusing on the following implementation measures:

(a) supporting the development and implementation of policies promoting legal migration and the implementation of the Union legal migration *acquis*;

(b) promoting ~~early~~ integration measures for the social and economic inclusion of third-country nationals, preparing their active participation in and their acceptance by the receiving society, ~~in particular~~ with the involvement of **national and, in particular, regional or** local ~~or regional~~ authorities and civil society organisations ***in synergy with the European Social Fund (ESF+) which besides other objectives funds measures supporting access of migrants to the labour market.***

BG: (Comments):

We support the modification of this provision. We consider that further distinction of the support under AMF and ESF+ needs to be set.

CZ: (Comments):

The CZ supports the proposals for change of this letter.

DE: (Drafting):

b) promoting ~~early~~ integration measures for the social ~~and economic~~ inclusion of third-country nationals, preparing their active participation in and their acceptance by the receiving society, in particular with the involvement of local or regional authorities and civil society organisations.

DE: (Comments):

We welcome the deletion of the word "early", as we reject a time-based delimitation of the funds. However, the phrase "economic inclusion of TCNs" is still included. We suggest deleting this phrase in order to find a clear distinction to the ESF+, which is intended to promote labour market integration. We consider the new addition "in synergy with the European Social Fund (ESF+) which funds measures supporting access of migrants to the labour market" to be insufficient to distinguish the funds from each other and to avoid double funding. It should therefore also be deleted.

EE: (Comments):

EE welcomes that the restraint „early“ has been deleted.

FR: (Drafting):

(b) promoting ~~early~~ integration measures for the social and economic inclusion of third-country nationals, preparing their active participation in and their acceptance by the receiving society ~~in particular with the involvement of~~ **national and, in particular, regional or** local ~~or regional~~ authorities and civil society organisations ~~in synergy with the European Social Fund (ESF+) which funds measures supporting access of migrants to the labour market.~~

HR: (Comments):

It was suggested, in general, that ESF+ covers long-term socio-economic integration of third-country nationals, while AMF centres on (short-term) integration measures related to reception (support for specific needs of Member States, language learning, citizenship education courses) as well as the development of national integration strategies and increase of Member States' capacities.

Starting from the existing dynamics and achieved absorption of funds under AMIF, HR supports the proposal that the new AMIF, same as the current AMIF, regulates short-term and mid-term integration whereas long-term integration would be funded under ESF+.

One of the issues relates to the manner in which interventions can be separated under AMF and ESF+ in practice. Each Member State decides for itself where it will place the focus for integration. Where access to the labour market is concerned, ESF+ is relevant. If a Member State is facing a large migration-related challenge, activities should also be planned within the framework of ESF+.

The new approach aims to encompass and connect all forms of integration (integration in the location of residence, integration in the workplace and integration through the education process) for achieving the highest possible level of success when it comes to measures of integration.

IT: (Drafting):

(b) promoting ~~early~~ integration measures for the social and economic inclusion of third-country nationals, **including labour market integration,** preparing their active participation in and their acceptance by the receiving society, ~~in particular~~ with the involvement of **national and, in particular, regional or** local ~~or regional~~ authorities and civil society organisations **in synergy with the European Social Fund (ESF+) which besides other objectives funds measures supporting access of migrants to the labour market.**

IT: (Comments):

Supporting integration into the labour market should be added with a view to ensure coherence with the indicator foreseen under Annex VIII- SO2 3.
(a)

SI: (Comments):

There is still no clear distinction between AMF measures and measures falling under the ESF +. It is not acceptable for this to be dependent on the Member States. There are differences between Member States and the audit may ultimately conclude that a Member State's decision is incorrect,...

3. The Fund shall contribute to the specific objective set out in Article 3(2)(c), by focusing on the following implementation measures:

(a) ensuring a uniform application of the Union *acquis* and policy priorities regarding infrastructure, procedures and services;

(b) supporting an integrated and coordinated approach to return management at the Union and Member States' level, to the development of capacities for effective and sustainable return and reducing incentives for irregular migration;

(c) supporting assisted voluntary return and reintegration;

(d) strengthening cooperation with third countries and their capacities to implement readmission agreements and other arrangements, and enable sustainable return.

ES: (Drafting):

*strengthening **the external dimension** through cooperation with third countries and their capacities to implement readmission agreements and other arrangements, and enable sustainable return.*

ES: (Comments):

The Kingdom of Spain would like to reintroduce the alternative drafting of the previous Presidency.

ANNEX III

Scope of support

AT: (Comments):

AT is fine with the changes made in this Annex, but see comment to para.3.

1. Within the policy objective referred to in Article 3(1), the Fund shall ~~in particular~~ support ***actions such as*** ~~the following~~:

PT: (Comments):

PT strongly supports this change and considers it fundamental in the final version to be adopted for the current Regulation. The actions listed in Annex III must be considered as indicative, and not as exclusive.

(a) the establishment and development of national strategies in asylum, legal migration, integration, return and irregular migration;

(b) the setting up of administrative structures, ***and*** systems, ***including the development of IT systems and the interoperability of databases*** ~~and~~, tools and training of staff, including local authorities and other relevant stakeholders;

BG: (Comments):

We support the modification of this provision.

DE: (Comments):

We support the explicit reference to IT systems, but we would like to know what is meant by “interoperability of databases”? What databases are meant?

EE: (Comments):

EE welcomes the addition of the reference to IT systems in Annex III and VII. However, as the term „ICT“ has been used in ISF regulation, it should be synchronized between the funds.

HR: (Comments):

HR supports adding additional text related to setting up and development of IT systems and interoperability of databases.

IT: (Comments):

Support

(c) the development, monitoring and evaluation of policies and procedures including on collection, ~~and~~ exchange **and analysis** of information and data, ~~development~~ and application of common statistical tools, methods and indicators for measuring progress and assessing policy developments;

IT: (Comments):

Support

(d) the exchanges of information, best practices and strategies, mutual learning, studies and research, the development and implementation of joint

actions and operations and the setting-up of transnational cooperation networks;
(e) assistance and support services consistent with the status and the needs of the person concerned, in particular the vulnerable groups;
(f) actions aimed at enhancing awareness of asylum, integration, legal migration and return policies among stakeholders and the general public;
ES: (Drafting): <i>g) actions to enhance the external dimension of migration management.</i>
ES: (Comments): The Kingdom of Spain would like to reintroduce letter g) of the previous Presidency.
2. Within the specific objective referred to in Article 3(2)(a), the Fund shall in particular support <i>actions such as</i> the following actions :
PT: (Comments): PT strongly supports this change and considers it fundamental in the final version to be adopted for the current Regulation. The actions listed in Annex III must be considered as indicative, and not as exclusive.
(a) providing material aid, including assistance at the border;
(b) conducting asylum procedures (<i>i.e. staff, operational needs</i>) to ensure compliance with the asylum acquis;
IT: (Comments):

Support
(c) identifying applicants with special procedural or reception needs;
(d) establishing or improving reception accommodation infrastructure, including the possible joint use of such facilities by more than one Member State;
(e) enhancing the capacity of Member States to collect, analyse and disseminate country of origin information;
(f) actions related to the conducting of procedures for the implementation of the Union Resettlement [and Humanitarian Admission] Framework or national resettlement schemes that are compatible with the Union Resettlement Framework;
(g) transfers of beneficiaries of international protection;
ES: (Comments): The Kingdom of Spain upholds a scrutiny reservation.
(h) enhancing capacities of third countries to improve the protection of persons in need of protection;
(i) establishing, developing and improving effective alternatives to detention, in particular in relation to unaccompanied minors and families.
3. Within the specific objective referred to in Article 3(2)(b), the Fund shall in particular support <i>actions such as</i> the following :

PT: (Comments):

PT strongly supports this change and considers it fundamental in the final version to be adopted for the current Regulation. The actions listed in Annex III must be considered as indicative, and not as exclusive.

(a) information packages and campaigns to raise awareness of legal migration channels to the Union, including on the Union legal migration *acquis*;

(b) development of mobility schemes to the Union, such as circular or temporary migration schemes, including training to enhance employability;

DE: (Comments):

The support for circular or temporary migration should not lead to a loss in protection by labour law and/or social security for those staying for a short-time period.

(c) cooperation between third countries and the recruitment agencies, the employment services and the immigration services of Member States;

(d) the assessment of skills and qualifications acquired in a third country, as well as their transparency and compatibility with those of a Member State;

(e) assistance in the context of applications for family reunification within the meaning of Council Directive 2003/86/EC²¹;

(f) assistance in relation to a change of status for third-country nationals already legally residing in a Member State, in particular in relation to the acquisition of a legal residence status defined at Union level;

²¹ Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification, (OJ L 251, 03/10/2003 p. 12 – 18.).

ES: (Comments):

The Kingdom of Spain reiterates to the Commission the need of further clarification.

(g) ~~early~~ integration measures such as tailored support in accordance with the needs of third-country nationals and integration programmes focusing on education, language and other training such as civic orientation courses and professional guidance, ***administrative and legal guidance, one-stop shops for integration providing general advice and assistance to third country nationals in areas such as housing, means of subsistence, psychological care, health care, etc;***^{22 23}

AT: (Drafting):

(g) ~~early~~ integration measures such as tailored support in accordance with the needs of third-country nationals and integration programmes focusing on education, language and other training such as civic orientation courses and professional guidance ***and other measures that are specifically mentionend under the recital (X). administrative and legal guidance, one-stop shops for integration providing general advice and assistance to third country nationals in areas such as housing, means of subsistence, psychological care, health care, etc;***

AT: (Comments):

AT would like to express again the importance of adding the mentioned two new recitals that will bring clarification regarding integration measures and explain the complementarities between AMIF and ESF+.

The measures AT erased in point (g) should be mentioned in the new recital.

²² A recital will indicate that every integration measure that can be funded within the current AMIF (2014-2020) will continue to be eligible in the next programming period 2021-2027.

²³ New recital: Actions in complementarity with the European Social Fund (ESF+) are welcomed taking into account that the ESF+ is explicitly funding measures that can target both EU and third-country nationals such as improving access to the labour market and promote employment, vocational training and job placement, promoting social inclusion and access to services, improving living and working conditions while combating discrimination and inequalities, thus contributing to the long-term socio-economic integration of third-country nationals.

BG: (Comments):

We support the inclusion of concrete measures related to integration which will be supported under AMF. Still some of the integration measures which will be supported under AMF are duplicating the ESF+ scope of support. A better distinction of the support under AMF and ESF+ needs to be set.

DE: (Comments):

We welcome the deletion of the word "early" as well as the additions in the list of fundable measures. However, "one-stop shops" are already mentioned in letter (i). Duplication should be avoided. We reject the reference in footnote 19 to a new recital ("New recital: Actions in complementarity with the European Social Fund (ESF+) are welcomed [...]"). This raises the question of how AMIF and ESF+ can be distinguished from each other if measures complementary to ESF+ are also funded under AMIF, and also the "long-term" wording would be misleadingly reintroduced.

EE: (Comments):

EE welcomes that the restraint „early“ has been deleted.

ES: (Comments):

The Kingdom of Spain welcomes the deletion of "early".

HR: (Comments):

HR supports including administrative and legal guidance, one-stop shops for integration providing general advice and assistance to third-country nationals in areas such as housing, means of subsistence, psychological care, health care, etc. in Annex III Scope of support.

IT: (Drafting):

g) ~~early~~ integration measures such as tailored support in accordance with the needs of third-country nationals and integration programmes focusing on education, language and other training such as civic orientation courses, professional guidance, ***measures that lead to social inclusion and labour market integration, administrative and legal guidance, one-stop shops for integration providing general advice and assistance to third country nationals in areas such as housing, means of subsistence, psychological care, health care, etc;***

IT: (Comments):

Integration measures aimed at supporting integration into the labour market should be added with a view to ensure coherence with the indicator foreseen under Annex VIII- SO2 3. (a)

MT: (Drafting):

(g) integration measures such as tailored support in accordance with the needs of third-country nationals and integration programmes focusing on education, language and other training such as civic orientation courses and professional guidance, administrative and legal guidance, one-stop shops for integration providing general advice and assistance to third country nationals in areas such as ~~housing~~ ***accommodation***, means of subsistence, psychological care, health care, etc;

MT: (Comments):

With regard to paragraph 3(g), Malta is proposing that the term ‘housing’ be replaced with the term ‘accommodation’ as seen in **bold italics**.

(h) actions promoting equality in the access and provision of public and private services to third-country nationals, including adapting them to the needs of the target group;

(i) cooperation between governmental and non-governmental bodies in an integrated manner, including through coordinated integration-support centres, such as one-stop shops;

(j) actions enabling and supporting third-country nationals’ introduction to and active participation in the receiving society and actions promoting acceptance by the receiving society;

(k) promoting exchanges and dialogue between third-country nationals, the receiving society and public authorities, including through the

consultation of third-country nationals, and intercultural and inter-religious dialogue.

4. Within the specific objective referred to in Article 3(2)(c), the Fund shall ~~in particular~~ support ***actions such as*** ~~the following~~:

PT: (Comments):

PT strongly supports this change and considers it fundamental in the final version to be adopted for the current Regulation. The actions listed in Annex III must be considered as indicative, and not as exclusive.

(a) infrastructure for reception or detention, including the possible joint use of such facilities by more than one Member State;

(b) introduction, development and improvement of effective alternative measures to detention, in particular in relation to unaccompanied minors and families;

ES: (Drafting):

introduction and reinforcement of ~~independent~~ and effective systems for monitoring forced return, as laid down in Article 8(6) of Directive 2008/115/EC;

ES: (Comments):

The Kingdom of Spain would prefer to delete the word “*independent*” in the systems for monitoring forced return to prevent the possible interference of other entities apart from the State Public Administration in charge of this task. Furthermore the Article 8(6) of Directive 2008/115/EC states “*an effective systems for monitoring forced return*” and does not introduce the word “*independent*”. Furthermore the Article 8(6) of Directive 2008/115/EC states “*an effective systems for monitoring forced return*” and does not introduce the word “*independent*”

(c) introduction and reinforcement of independent and effective systems for monitoring forced return, as laid down in Article 8(6) of Directive

2008/115/EC²⁴;

(d) countering incentives for irregular migration, including the employment of irregular migrants, through effective and adequate inspections based on risk assessment, the training of staff, the setting-up and implementation of mechanisms through which irregular migrants can claim back payments and lodge complaints against their employers, or information and awareness-raising campaigns to inform employers and irregular migrants about their rights and obligations pursuant to Directive 2009/52/EC²⁵;

EE: (Comments):

In p 4(d) it is brought out that the information and awareness-raising campaigns should be organized to inform employers and irregular migrants about their rights and obligations. We suggest that also the persons who carry out the migration monitoring activities (e.g. in universities, local municipalities etc) should be taken into account. In addition, the Fund should support the controls based on the IT solutions through which it would be possible to offer the information exchange between the private and public sector to prevent the illegal migration more efficiently.

FR: (Drafting):

(d) countering incentives for irregular migration, including the employment of irregular migrants, **the establishment of control mechanisms and sanctions, as well as information and awareness campaigns for employees and migrants** ~~through effective and adequate inspections based on risk assessment, the training of staff, the setting-up and implementation of mechanisms through which irregular migrants can claim back payments and lodge complaints against their employers, or information and awareness-raising campaigns to inform employers and irregular migrants about their rights and obligations pursuant to Directive 2009/52/EC²⁶;~~

FR: (Comments):

The specific means and modalities to be used to combat irregular migration incentives and eligible for funding are the choice and the responsibility of

²⁴ Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals (OJ L 348, 24.12.2008, p. 98).

²⁵ Directive 2009/52/EC of the European Parliament and of the Council of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals (OJ L 168, 30.6.2009., p. 24–32).

²⁶ Directive 2009/52/EC of the European Parliament and of the Council of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals (OJ L 168, 30.6.2009., p. 24–32).

the Member States and need not be set by the MAF Regulation.

(e) preparation of return, including measures leading to the issuing of return decisions, the identification of third-country nationals, the issuing of travel documents and family tracing;

(f) cooperation with the consular authorities and immigration services or other relevant authorities and services of third countries with a view to obtaining travel documents, facilitating return and ensuring readmission including through the deployment of third-country liaison officers;

(g) return assistance, in particular assisted voluntary return and information about assisted voluntary return programmes;

(h) removal operations, including related measures, in accordance with the standards laid down in Union law, with the exception of coercive equipment;

(i) measures to support the returnee's durable return and reintegration, **including cash-incentives, training, placement and employment assistance and start-up support for economic activities**;

AT: (Comments):

AT is fine with the changes.

IT: (Comments):

Support

PT: (Comments):

Portugal supports this change.
(j) facilities and services in third countries ensuring appropriate temporary accommodation and reception upon arrival, including for unaccompanied minors and other vulnerable groups in line with international standards;
(k) cooperation with third countries on countering irregular migration and on effective return and readmission, including in the framework of the implementation of readmission agreements and other arrangements;
(l) measures aimed at raising awareness of the appropriate legal channels for immigration and the risks of illegal immigration;
(m) support for and actions in third countries, including on infrastructure, equipment and other measures, provided these contribute to enhancing effective cooperation between third countries and the Union and its Member States on return and readmission.
ANNEX IV
Actions eligible for higher co-financing in line with Articles 12(2 3) and 13(7)
– Integration measures implemented by local and regional authorities and civil-society organisations;

FR: (Drafting):

– Integration measures implemented by **national**, local and regional authorities and civil-society organisations;

– Actions to develop and implement effective alternatives to detention;

– Assisted Voluntary Return and Reintegration programmes and related-activities;

– Measures targeting vulnerable persons and applicants for international protection with special reception and/or procedural needs, including measures to ensure effective protection of children in migration, in particular those unaccompanied;

BE: (Comments):

There is no clear definition of ‘children in migration’ (annex VI I 004) or the target group (art 4.3 of AMF) for projects under the AMF.

The AMF regulation refers to the Treaty but the target group in the treaty (art 78-79) appears to be limited to applicants for protection or persons that received this protection.

This would mean that the target group in AMF stays as limited as it was under AMIF, which is in a way logical as the specific objective is about the CEAS.

During the AMF working party on 23-24 October a question was raised whether **UAM who do not apply for asylum** are eligible for support under AMF, Specific Objective 1. The Commission clearly stated that this was possible and that the target group was no longer detailed in the AMF regulation in order to **include all children in migration**. We welcome this approach very much but wonder how we can defend (versus the Audit, COM) to include all children in migration when the target group seems limited by the Treaty?

Can we have confirmation that any child in migration, regardless of its status, can be in the target group for projects under Specific Objective 1, and can count towards the indicators?

FR: (Drafting):

- Measures targeting vulnerable persons and applicants **and beneficiaries** of international protection with special reception and/or procedural needs, including measures to ensure effective protection of children in migration, in particular those unaccompanied, **and to ensure health services including psychological and physical assistance.**

– *Projects in third countries that aim at tackling high migration pressure on Member States.*

AT: (Drafting):

- ~~*Projects in third countries that aim at tackling high migration pressure on Member States.*~~
 - *Measures that will stabilize countries of origin and first host countries by establishing protective surroundings/areas and increase the living conditions as well as the livelihood of asylum seekers and the host country society.*

AT: (Comments):

AT thinks that adding an action regarding the external dimension here would be benefitting for the MS, as those actions will be linked with high financial amounts.

AT understand the EC's concern that the measures named under this ANNEX must be very specific and there AT added another proposal.

DE: (Comments):

What kind of projects are meant here? Any kind of projects in third countries, or only projects with specific measures? There can only be high co-financing rates in exceptional cases.

Regarding the funding of the external dimension in general see above, comment to Article 3, para. 1.

ES: (Comments):

The Kingdom of Spain welcomes the introduction of this action eligible for higher co-financing.

FR: (Drafting):

~~***Projects in third countries that aim at tackling high migration pressure on Member States.***~~

FR: (Comments):

Co-financing increased to 90% for these actions whose scope is not sufficiently defined does not appear justified

HR: (Comments):

As we have stated in the comment on Article 5, HR supports the possibility of establishing cooperation with third countries for the purpose of meeting the objectives under the Fund through the implementation measures referred to in Annex II, but we also propose that a more detailed explanation be provided concerning what exactly falls within the scope of the mentioned cooperation.

IT: (Comments):

Support

MT: (Comments):

With reference to the last point added to this Annex, Malta supports initiatives in third countries to help address pressures on Member States, as long as ring-fencing is not applied to this component.

PT: (Comments):

- Portugal limits its support to the introduction of any fixed amount of allocation, under the AMIF, to be attributed to the external dimension, to the need to obtain confirmation that this amount will exclusively come from the Thematic Facilities – and thus not affect the allocations to the National Programs (as seems to be indicated under Art. 9, new wording under parag. 2);
- Portugal considers that it should be born in mind that the NDICI already includes a minimum threshold of 10% allocated to the external dimension of migrations, in amounts that largely surpass those that may be allocated from the AMIF.

PT: (Drafting):

Projects supporting the capacity of Member States' asylum systems as regards to infrastructure and services where necessary;

PT: (Comments):

Regarding **Annex IV** – *Actions eligible for higher co-financing in-line with Arts. 12(2) and 13(7)*, Portugal agrees with the definition of a certain number of areas in which the cofinancing can amount to 90% of the approved, having nothing to object to the policy areas mentioned in the current proposal.

Moreover, Portugal would like to proposal of the inclusion of a 5th (or 6th) group, in line with al. b), n. 2, of the Annex, with the following wording:

Projects supporting the capacity of Member States' asylum systems as regards to infrastructure and services where necessary;

ANNEX V

Core performance indicators referred to in Article 28(1)

ES: (Comments):

The position of the Kingdom of Spain on these indicators would be exposed during the special meeting on JHA indicators announced by the European Commission, in theory, on February 25-26 2019.

This said, the Kingdom of Spain upholds a scrutiny reservation regarding all the annexes that include indicators.

PT: (Comments):

As regards to **Annexes I, V and VIII**, Portugal reserves its position to further discussions of the Ad Hoc Working Party on its content and extent.

Specific objective 1: To strengthen and develop all aspects of the Common European Asylum System, including its external dimension:

1. Number of persons resettled with the support of the Fund.

LU: (Drafting):

Number of persons resettled, relocated or otherwise admitted with the support of the fund.
Data source: Member States
2. Number of persons in the reception system as compared to the number of asylum applicants. BG: (Comments): The indicator needs further clarification. EE: (Comments): The list of core performance indicators in Annex V contains some indicators for which it is unclear what value does collecting the specific indicator will give to the fund's performance, e.g. the indicator 2 under specific objective 1 "Number of persons in the reception system as compared to the number of asylum applicants". In EE the asylum applicants are also a part of the reception system, therefore it is difficult to make a comparison between the target groups mentioned in the formulation of this indicator.
Data source: Eurostat
3. Convergence of protection recognition rates for asylum seekers from the same country. BG: (Comments): The indicator is partial in view of the principle each application to be examined individually considering all facts and circumstances. In this connection we consider that this indicator have to be deleted. CZ: (Drafting): Convergence of protection recognition rates for asylum seekers from the same country.

CZ: (Comments):

We suggest to delete this indicator. The asylum procedure is unique per each case and should not be generalized. More over for most of the countries and member states the statistical population will be too low for any valid conclusions.

ES: (Comments):

The Kingdom of Spain maintains its scrutiny reservation.

LU: (Drafting):

3. Number of persons holding a valid residence permit for reasons for international protection.

LU: (Drafting):

4. Number of asylum seekers compared to the total population of the member state

Data source: Eurostat

LU: (Drafting):

5. Number of decions on asylum applications at all instances as compared to the number of pending asylum applications

Specific objective 2: To support legal migration to the Member States and including to contribute to the integration of third-country nationals:

IT: (Comments):

Support

1. Number of persons who participated in pre-departure measures supported by the Fund.
LU: (Drafting): 2. Number of first residence permits issued to TCN
Data source: Member States
2. Number of persons who participated in integration measures supported by the Fund reporting that the measures were beneficial for their <u>early</u> integration as compared to the total number of persons who participated in the integration measures supported by the Fund. BG: (Comments): The indicator is not objective in our opinion as it reflects the considerations of the TCNs. We would request clarification. CZ: (Drafting): Number of persons who participated in integration measures supported by the Fund reporting that the measures were beneficial for their early integration as compared to the total number of persons who participated in the integration measures supported by the Fund. 2. Number of persons assisted by the Fund through integration measures CZ: (Comments): The indicator proposed by the commission will be extremely difficult to collect and is very subjective. The measures could be for example beneficial in a long term and it is almost impossible to receive a feedback from a person after the project ends. Taking into account the number of supported persons which is usually around 10 000-20 000 people per year, it will mean increase of administrative burden. DE: (Drafting): Number of persons who participated in integration measures supported by the Fund

DE: (Comments):

As this is not only a quantitative indicator, but also a qualitative indicator. In order to apply the indicator MS would have to collect appropriate information by surveying persons participating in such integration measures. The application of the indicator would lead to an extensive administrative burden.

We also welcome the deletion of the word "early", as we reject a time-based delimitation of the funds (according to the deletions already suggested in the articles above).

ES: (Comments):

The Kingdom of Spain maintains a scrutiny reservation. Considering that the proposal includes just 2 indicators in this specific objective, it would be no reasonable that one of them is based merely on opinion.

FR: (Drafting):

2. Number of persons who participated in integration measures supported by the Fund ~~reporting that the measures were beneficial for their early integration as compared to the total number of persons who participated in the integration measures supported by the Fund~~

FR: (Comments):

The establishment and collection of such an indicator can not be established on an objective basis insofar as the indicator proposes to probe the feelings and perceptions of each person. In addition, we would like to take into account the specific funding attached to the integration of beneficiaries of international protection.

IT: (Drafting):

Number of persons who participated in integration measures supported by the Fund ~~reporting that the measures were beneficial for their early integration as compared to the total number of persons who participated in the integration measures supported by the Fund~~

IT: (Comments):

This indicator is aimed at measuring whether funded actions are effective in terms of integration, which is quite difficult to assess: different dimensions of integration could be considered and member states could apply different interpretation, thus making it difficult to compare results achieved

throughout the EU. Furthermore, the number of integrated TCN is compared to the number of participants to the actions and MS are therefore asked to distinguish TCN who positively benefitted of the funded actions from those who participated to the same actions but who have neutral or negative effects in terms of integration.

LU: (Drafting):

2. Number of persons who participated in integration measures supported by the Fund aiming the labour market, including language courses, as compared to the total number of persons who participated in the integration measures supported by the Fund.

SI: (Comments):

We have a problem with indicator under specific objective 2/2 - how to measure how many people benefited from the measures? How do we get this information? With the survey, in the media campaign project (broad target audience)? This simply can not be measured.

Data source: Member States

Specific objective 3: To contribute to countering irregular migration and ensuring effectiveness of return and readmission in third countries:

1. **Overall Number** of returns following an order to leave compared to the number of third-country nationals ordered to leave.

FR: (Drafting):

1. **Overall Number** of returns **co-financed by the Fund** following an order to leave compared to the number **of returns** of third-country nationals ordered to leave.

Data source: Eurostat

2. Number of returnees who have received pre or post-return reintegration assistance co-financed by the Fund, as compared to the total number of

returns supported by the Fund.
Data source: Member States
ANNEX VI
Types of intervention
TABLE 1: CODES FOR THE INTERVENTION FIELD DIMENSION
AT: (Comments):
AT is fine with the changes in this article.
I. CEAS
001 Reception conditions
002 Asylum procedures
003 Implementation of the Union acquis

004 Children in migration
005 Persons with special reception and procedural needs
006 Resettlement <i>[for humanitarian admissions]</i>
EE: (Comments): EE welcomes the addition of humanitarian admissions to code 006 (resettlement) and „vulnerable persons“ under each area/chapter.
007 Solidarity efforts between Member States
008 Operating support
<i>009 Vulnerable persons</i>
II. Legal migration and integration
001 Development of integration strategies
002 <i>Vulnerable persons/ UAMs especially</i> ✓ victims of trafficking in human beings

003 Integration measures – information and orientation, one stop shops
004 Integration measures – language training
005 Integration measures – civics and other training
IT: (Drafting):
II. Legal migration and integration
005 Integration measures – civics, other training <u>and measures aimed at facilitating social inclusion and labour market integration.</u>
IT: (Comments):
Measures aimed at supporting labour market integration should be added with a view to ensure coherence with the indicator foreseen under Annex VIII- SO2 3. (a)
006 Integration measures – Introduction, participation, exchanges host society
IT: (Comments):
Support
007 Integration measures – basic needs
008 Pre-departure measures

009 Mobility schemes
010 Acquisition of legal residence
<u>011 Operating support</u>
FR: (Drafting): 011 Integration measures – support in favor of beneficiaries of international protection
FR: (Comments): <i>We intend to stress the importance of financing measures in favour of beneficiaries of international protection</i>
IT: (Comments): Support
FR: (Drafting): 012 Operating support
III. Return
001 Alternatives to detention
002 Reception/detention conditions

003 Return procedures
004 Assisted voluntary return
005 Reintegration assistance
006 Removal/Return operations
007 Forced-return monitoring system
008 Vulnerable persons/UAMs
009 Measures addressing incentives for irregular migration
010 Operating support
IV. Technical assistance
NL: (Comments)

Technical assistance for MS is financed through a flat rate (see CPR). This has a positive effect on the administrative burden for MS. This advantage will be undone if MS in their report should make a distinction in the cost according to this proposal.

This should be aligned with the proposal under BMVI and ISF.

001 Information and communication

NL: (Drafting)

~~001 Information and communication~~

002 Preparation, implementation, monitoring and control

NL: (Drafting)

~~002 Preparation, implementation, monitoring and control~~

003 Evaluation and studies, data collection

NL: (Drafting)

~~003 Evaluation and studies, data collection~~

004 Capacity building

NL: (Drafting)

~~004 Capacity building~~

TABLE 2: CODES FOR THE TYPE OF ACTION DIMENSION

001 Development of national strategies

002 Capacity building

003 Education and training for third-country nationals
004 Development of statistical tools, methods and indicators
005 Exchange of information and best practices
006 Joint actions/operations (between MS)
007 Campaigns and information
008 Exchange and secondment of experts
009 Studies, pilot projects, risk assessments
010 Preparatory, monitoring, administrative and technical activities
011 Provision of assistance and support services to TCN
012 Infrastructure
013 Equipment

TABLE 3: CODES FOR THE IMPLEMENTATION MODALITIES DIMENSION
--

001 Specific action

002 Emergency assistance

003 Cooperation with third countries

004 Actions in third countries

005 Strategic Union priorities

ANNEX VII

Eligible actions for operating support
--

Within the specific objective to strengthen and develop all aspects of the Common European Asylum System, including its external dimension, and the specific objective to contribute to countering irregular migration, ensuring effectiveness of return and readmission in third countries <u>and the specific objective to support legal migration to the Member States and to contribute to the integration of third-country nationals</u>, operating support shall cover:

AT: (Comments):

AT is fine with the changes made in this article.

BG: (Comments):

We support the suggested modification of the provision.

DE: (Comments):

Germany supports this addition.

IT: (Comments):

Support

PT: (Comments):

- Portugal limits its support to the introduction of any fixed amount of allocation, under the AMIF, to be attributed to the external dimension, to the need to obtain confirmation that this amount will exclusively come from the Thematic Facilities – and thus not affect the allocations to the National Programs (as seems to be indicated under Art. 9, new wording under parag. 2);
- Portugal considers that it should be born in mind that the NDICI already includes a minimum threshold of 10% allocated to the external dimension of migrations, in amounts that largely surpass those that may be allocated from the AMIF.

– staff costs;

DE: (Drafting):

staff costs **contributing to the achievement of the objectives of this Regulation;**

DE: (Comments):

Germany: Detailed proposal based on parallel draft regulations
– service costs, such as maintenance or replacement of equipment <i>or IT systems</i> ;
DE: (Drafting): service costs, such as maintenance or replacement of equipment or IT systems, <u>contributing to the achievement of the objectives of this Regulation</u> ;
DE: (Comments): Germany: Detailed proposal based on parallel draft regulations
IT: (Comments): Support
– service costs, such as maintenance and repair of infrastructure.
DE: (Drafting): service costs, such as maintenance and repair of infrastructure, <u>contributing to the achievement of the objectives of this Regulation</u> .
DE: (Comments): Germany: Should here only IT systems be involved here, or rather (in line with parallel VO drafts) "relevant ICT systems and networks"?

ANNEX VIII

Output and result indicators referred to in Article 28(3)

AT: (Comments):

AT is fine with the changes made in this article.

ES: (Comments):

The position of the Kingdom of Spain on these indicators would be exposed during the special meeting on JHA indicators announced by the European Commission, in theory, on February 25-26 2019.

This said, the Kingdom of Spain upholds a scrutiny reservation regarding all the annexes that include indicators.

PT: (Comments):

As regards to **Annexes I, V and VIII**, Portugal reserves its position to further discussions of the Ad Hoc Working Party on its content and extent.

Specific objective 1: To strengthen and develop all aspect of the Common European Asylum System, including its external dimension:

1. Number of target group persons provided with assistance with the support of the Fund:

(a) Number of target group persons benefiting from information and assistance throughout the asylum procedures;

(b) Number of target group persons benefiting from legal assistance and/ *or* representation;

(c) Number of vulnerable persons, victims of trafficking in human beings, and unaccompanied minors benefiting from specific assistance.

2. Capacity (number of places) in new reception accommodation infrastructure set up in line with the common requirements for reception conditions set out in the Union acquis and of existing reception accommodation infrastructure, improved in accordance with the same requirements as a result of the projects supported by the Fund and percentage in the total reception accommodation capacity;

CZ: (Drafting):

Capacity (number of places) in new reception accommodation infrastructure set up in line with the common requirements for reception conditions set out in the Union acquis and of existing reception accommodation infrastructure, improved in accordance with the same requirements as a result of the projects supported by the Fund ~~and percentage in the total reception accommodation capacity~~;

CZ: (Comments):

The total reception capacity is not related to the impact of the Fund.

DE: (Comments):

This indicator should be deleted completely and without any substitution.

FR: (Drafting):

2. Capacity (number of places) in new reception accommodation infrastructure set up in line with the common requirements for reception conditions set out in the Union acquis and of existing reception accommodation infrastructure, improved in accordance with the same requirements as a result of the projects supported by the Fund and percentage in the total reception accommodation capacity ;

FR: (Comments):

This indicator would be too difficult to measure

3. Number of places adapted for unaccompanied minors (UAM) supported by the Fund ~~as compared to the total number of places adapted for~~

~~unaccompanied minors;~~

BG: (Comments):

We support the modification of this provision.

DE: (Comments):

We support the deletion.

IT: (Comments):

Support

4. Number of persons trained in asylum-related topics with the assistance of the Fund, and that number as a percentage of the total number of staff trained in those topics;

DE: (Drafting):

Number of persons trained in asylum-related topics with the assistance of the Fund.

DE: (Comments):

The comparison with the total number of staff trained in those topics is not known in Germany, due to the federal system. Therefore, a modification is necessary.

FR: (Drafting):

4. Number of persons trained in asylum-related topics with the assistance of the Fund, ~~and that number as a percentage of the total number of staff trained in those topics~~;

FR: (Comments):

This indicator would be too difficult to measure

5. Number of applicants for international protection transferred from one Member State to another with support of the Fund;

ES: (Comments):

The Kingdom of Spain presents a scrutiny reservation.

6. Number of persons resettled with the support of the Fund.

Data source: Member States

Specific objective 2: To support legal migration to the Member States and including to contribute to the integration of third-country nationals:

IT: (Comments):

Support

1. Number of persons who participated in pre-departure measures supported by the Fund.

2. Number of **national, regional and** local ~~local and regional~~ authorities that have implemented integration measures with the support of the Fund.

BG: (Comments):

We support the modification of this provision.

IT: (Comments):

Support

3. Number of persons who participated in measures supported by the Fund focusing on:

(a) education, ~~and~~ training *and measures that lead to labour market integration*;

BG: (Comments):

We support the suggested wording.

DE: (Comments):

We support a clear differentiation between AMIF and ESF+. This should also be reflected in the indicators, and therefore “training” and “labour market integration” should be deleted.

~~(b) labour market integration;~~

BG: (Comments):

We support the deletion of this provision.

(c) access to basic services; and

(d) active participation and social inclusion.

4. Number of persons who participated in integration measures supported by the Fund reporting that the measures were beneficial for their early integration as compared to the total number of persons who participated in the integration measures supported by the Fund;

DE: (Drafting):

Number of persons who participated in integration measures supported by the Fund

DE: (Comments):

As this is not only a quantitative indicator, but also a qualitative indicator. In order to apply the indicator MS would have to collect appropriate information by surveying persons participating in such integration measures. The application of the indicator would lead to an extensive administrative burden.

We also welcome the deletion of the word "early", as we reject a time-based delimitation of the funds (according to the deletions already suggested in the articles above).

FR: (Drafting):

4. Number of persons who participated in integration measures supported by the Fund. ~~reporting that the measures were beneficial for their early integration as compared to the total number of persons who participated in the integration measures supported by the Fund.~~

SI: (Comments):

We have a problem with indicator under specific objective 2/4 - how to measure how many people benefited from the measures? How do we get this information? With the survey, in the media campaign project (broad target audience)? This simply can not be measured.

Data source: Member States

Specific objective 3: To contribute to countering irregular migration and ensuring effectiveness of return and readmission in third countries:

1. Number of places in detention centres created/renovated with support from the Fund, as compared to the total number of created/renovated places in detention centres. DE: (Drafting): Number of places in detention centres created/renovated with support from the Fund DE: (Comments): Due to the federal system in Germany, the total number of such places in not known. FR: (Drafting): 1. Number of places in detention centres created/renovated with support from the Fund, as compared to the total number of created/renovated places in detention centres.
2. Number of persons trained on return-related topics with the assistance of the Fund.
3. Number of returnees whose return was co-financed by the Fund as compared to the total number of returns following an order to leave: DE: (Drafting): Number of returnees whose return was co-financed by the Fund DE: (Comments): Due to the federal system in Germany, the total number of returns following an order to leave in not known.

FR: (Drafting):

3. Number of returnees whose return was co-financed by the Fund ~~as compared to the total number of returns following an order to leave:~~

(a) persons who returned voluntarily;

(b) persons who were removed.

4. Number of returnees who have received pre or post return reintegration assistance co-financed by the Fund, as compared to the total number of returns supported by the Fund.

Data source: Member States

End