Council of the European Union
General Secretariat

Brussels, 18 May 2020

WK 5010/2020 REV 1

LIMITE

Interinstitutional files:
2018/0250(COD)
2018/0248(COD)
2018/0249(COD)

JAI	**CT**
FRONT	**ASIM**
VISA	**MIGR**
SIRIS	**CODEC**
ENFOPOL	**COMIX**

WORKING PAPER

This is a paper intended for a specific community of recipients. Handling and further distribution are under the sole responsibility of community members.

WORKING DOCUMENT

From:	General Secretariat of the Council
To:	Delegations
Subject:	Horizontal provisions of AMF, BMVI, ISF Comments from delegations

Following the request for contribution (CM 2050/20), delegations will find attached a revised compilation of replies received from Member States on the abovementioned subject.

Written comments submitted by the Member States

Horizontal provisions of AMF, BMVI, ISF
- drafting suggestions

WK 3834/20

Table of contents

AUSTRIA

Article AMF 7, BMVI 6, ISF 6 – General principles

Paragraph 2

AT is willing to accept the COM proposal, it a further definition on "national instruments" is done. In AT's understanding "national instruments" can be the ones financed by national budget only or the other financing instrument co-financed by the EU.

Article AMF 9, BMVI 8, ISF 8 – Thematic Facility (funding under reasoned opinion)

Paragraph 4

AT position AMF, BMVI: AT is willing to compromise with the COM proposal, but prefers the Council position in the PGA.

AT position ISF: AT does not accept the COM proposal and prefers EP wording.

Article AMF 13, BMVI 12, ISF 12 – Programmes

Paragraph 9 (AMF and ISF) / 15 (BMVI)

AT prefers the Council wording in the PGA, because it is sufficient. In AT's point of view, there is no need to explain the content of table 1 in ANNEX VI of the CPR, because the reference is already given.

The responsible authority for ISF has one remark: "It is advisable to use coherent terminology – for example the terms "Actions" and "types of intervention" should not be used in an alternating way."

Article AMF 23, BMVI 20, ISF 19 – Technical assistance

AT accepts the COM proposal.

Article AMF 25, BMVI 22, ISF 21 – Information, communication and publicity

Paragraph 1

AT position AMF, BMVI: AT prefers the Council wording in the PGA, because the amendment about classified and confidential data is very important. AT can accept the accompanying recital proposed by the COM.

AT position ISF: AT accepts the COM proposal.

Paragraph 2a

AT accepts the COM proposal.

Article AMF 26, BMVI 23, ISF 22 – Emergency situation

Paragraph 1

AT position AMF, BMVI: AT accepts the COM proposal.

AT position ISF: AT accepts the COM-proposal given that the second paragraph reads "In response to an emergency situation, the Commission shall decide to provide emergency assistance within the limits of available resources."

Question by the responsible authority for ISF: What does the phrasing "the Commission may decide" imply? Under which conditions does COM decide whom and when to support? As stated above, AT prefers "the Commission shall decide".

Article AMF 27, BMVI 24, ISF 23 – Cumulative, complementary and combined funding

New title

Paragraph 2

Recital (horizontal to all directly managed programmes)

AT accepts the COM proposal.

Article AMF 28, BMVI 25, ISF 24 – Monitoring and reporting

Paragraph 5

AT accepts the COM proposal.

BULGARIA

We will support your approach.

CZECHIA

Article AMF 7, BMVI 6, ISF 6 – General principles

Paragraph 2

The CZ does not support the amendment adding the coordination with the national instruments. This would lead to increase of administrative burden and the usage of national instruments is fully under national jurisdiction.

Article AMF 9, BMVI 8, ISF 8 – Thematic Facility (funding under reasoned opinion)

Paragraph 4

The CZ does not support the new wording. The new wording puts the responsibility on the member states however the original proposal put the responsibility on the Commission. We support the original proposal.

Article AMF 13, BMVI 12, ISF 12 – Programmes

Paragraph 9 (AMF and ISF) / 15 (BMVI)

The CZ does not support the wording. Why is different table of annex VI required for ISF? The programs should be built upon the same logic and should refer to same tables.

Article AMF 23, BMVI 20, ISF 19 – Technical assistance

The CZ can support the proposed wording.

Article AMF 25, BMVI 22, ISF 21 – Information, communication and publicity

Paragraph 1

The CZ can support the proposed wording.

Paragraph 2a

The CZ can support the proposed wording.

Article AMF 26, BMVI 23, ISF 22 – Emergency situation

Paragraph 1

The CZ **can support** the proposed wording as a technical principle (reference to Article 2). However we would like to know the definitions of emergency assistance for all three Funds. In the latest document WK 2137 2020 INIT it was mentioned that the COM will come up with a proposal for further discussion. Has it already happened?

Article AMF 27, BMVI 24, ISF 23 – Cumulative, complementary and combined funding

New title

The CZ can support the proposed wording.

Paragraph 2

The CZ can support the proposed wording.

Recital (horizontal to all directly managed programmes)

The CZ can support the proposed wording.

Article AMF 28, BMVI 25, ISF 24 – Monitoring and reporting

Paragraph 5

The CZ can support the proposed wording.

CYPRUS

Cyprus supports all suggestions.

ESTONIA

Article AMF 7, BMVI 6, ISF 6 – General principles

Paragraph 2

EE: Complementarity to national, regional and local intervention is stipulated in paragraph 1. No need for repetition.

Article AMF 9, BMVI 8, ISF 8 – Thematic Facility (funding under reasoned opinion)

Paragraph 4

EE prefers the initial Commission's proposal and PGA. However, we can be flexible.

Article AMF 13, BMVI 12, ISF 12 – Programmes

Paragraph 9 (AMF and ISF) / 15 (BMVI)

EE can support the addition. Although we do not see the need for repetition of CPR.

Article AMF 23, BMVI 20, ISF 19 – Technical assistance

EE can agree.

Article AMF 25, BMVI 22, ISF 21 – Information, communication and publicity

Paragraph 1

EE does not support the recital as it is disproportionate. This can't be a general rule and should be treated case by case.

Paragraph 2a

EE can support the paragraph 2a and new recital.

Article AMF 26, BMVI 23, ISF 22 – Emergency situation

Paragraph 1

EE can support the wording.

Article AMF 27, BMVI 24, ISF 23 – Cumulative, complementary and combined funding

Paragraph 2

EE can be flexible**.**

Recital (horizontal to all directly managed programmes)

EE can be flexible.

Article AMF 28, BMVI 25, ISF 24 – Monitoring and reporting

Paragraph 5

EE can support the wording.

FINLAND

Article AMF 7, BMVI 6, ISF 6 – General principles

Paragraph 2

FI can agree with the proposed wording suggestion. The wording contains elements of ensuring complementarity between the Union instruments and coordination with national instruments.

Finland could also be flexible with the wording suggested by the EP, however the references to structural funds and external financing instruments are already stated in the recitals 24 and 30 and it would not be necessary to repeat them here.

Article AMF 9, BMVI 8, ISF 8 – Thematic Facility (funding under reasoned opinion)

Paragraph 4

Para 4 should be aligned with para 3 while acknowledging the different implementation methods (direct, indirect and shared management). Para 3 seems to leave open who ensures that foreseen actions are not affected by a reasoned opinion. On the other hand it seems obvious on the basis of the implementation method. The same approach could be used in para 4, too.

Also to be noted that para 3 text speaks about 'when funding … is granted' whereas para 4 says 'when funding … is implemented'.

All in all FI would like to rely on the advice from the CLS.

Article AMF 13, BMVI 12, ISF 12 – Programmes

Paragraph 9 (AMF and ISF) / 15 (BMVI)

FI can be flexible provided that the breakdown of resources is **indicative** as proposed here.

Article AMF 23, BMVI 20, ISF 19 – Technical assistance

FI can agree with the proposed wording suggestion.

Article AMF 25, BMVI 22, ISF 21 – Information, communication and publicity

Paragraph 1

FI can agree with the proposed wording suggestion.

Paragraph 2a

FI can agree with the proposed wording suggestion.

Article AMF 26, BMVI 23, ISF 22 – Emergency situation

Paragraph 1

The suggested wording seems to be a compromise between the original wording "the Fund shall provide financial assistance" and the EP's suggested wording "the Commission may decide to provide financial assistance". FI can agree with the proposed wording but would like to point out that all funding from the thematic facility can only be provided within the limits of available resources.

Article AMF 27, BMVI 24, ISF 23 – Cumulative, complementary and combined funding

New title

Paragraph 2

Recital (horizontal to all directly managed programmes)

In the suggested title the original wording “complementary and combined funding” is suggested to be replaced by “alternative funding”. FI prefers the original title, which better describes the possibility to combine and complement funding from one fund/instrument with funding from another fund/instrument. The word “alternative” is firstly, more vague, and secondly, implies that funding for an action should derive from either one fund or another, not from more than one fund combined.

Article AMF 28, BMVI 25, ISF 24 – Monitoring and reporting

Paragraph 5

FI can agree with this wording.

FRANCE

Article AMF 7, BMVI 6, ISF 6 – General principles

Paragraph 2

Nous nous opposons à la proposition d'ajout de la Commission européenne. Nous souhaitons un alignement sur la ligne 145 IGFV pour les trois fonds :

" *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 actions, policies and priorities of the Union, and is complementary to other Union instruments. ~~Member States shall furthermore ensure that the support provided under this Regulation is coordinated with national instruments.~~ "

Article AMF 9, BMVI 8, ISF 8 – Thematic Facility (funding under reasoned opinion)

Paragraph 4

Nous ne sommes pas favorables à la proposition de la Commission. Dans la mesure où les actions sont retenues par la Commission européenne qui en délègue ensuite la gestion seule aux Etats membres, c'est la Commission européenne qui doit s'assurer du respect des dispositions des articles 18 et 19 du règlement portant dispositions communes.

Nous soutenons la position initiale du Conseil ; la référence aux articles 18 et 19 peut néanmoins être repositionnée en début de paragraphe:

***"For the purposes of Article 18 and Article 19(2) of Regulation (EU) No …/… [CPR], when funding from the* thematic facility is implemented in shared management, ~~the Member State shall ensure that~~ the Commission shall assess, <u>before selecting the action</u>, <u>whether</u> ~~that~~ the foreseen actions are not affected by a reasoned opinion by the Commission in respect of an infringement procedure under Article 258 TFEU on a matter that puts at risk the legality and regularity of expenditure or the performance of the projects. "**

Article AMF 13, BMVI 12, ISF 12 – Programmes

Paragraph 9 (AMF and ISF) / 15 (BMVI)

Nous ne sommes pas favorables à la proposition de la Commission : mentionner une telle information contreviendrait à toute logique de flexibilité dans l'exécution pluriannuelle des fonds, et par voie de conséquence, d'allègement de la gestion administrative. En effet, cette information nécessitera un suivi et une procédure de révision le cas échéant. Ces informations seront disponibles dans les divers rapports prévus au règlement in fine

Nous soutenons la version initiale de la Commission, identique à celle du Conseil.

Article AMF 23, BMVI 20, ISF 19 – Technical assistance

Nous sommes favorables à la proposition de la Commission.

Article AMF 25, BMVI 22, ISF 21 – Information, communication and publicity

Paragraph 1

Nous pouvons soutenir cette proposition.

Considérant accompagnant:

Nous demeurons opposés à l'obligation faite aux bénéficiaires de « fournir des informations dans les langues pertinentes pour le public cible », et donc à ce considérant. La notion de « langues pertinentes » n'est pas explicitée. Compte tenu de la diversité du public ciblé par les actions cofinancées par le FAMI et l'IGFV, cette exigence apparaît trop contraignante et coûteuse pour les porteurs. Cela signifierait potentiellement de devoir fournir les informations dans toutes les langues du monde.

Paragraph 2a

La rédaction du paragraphe 2a ne tient pas compte du caractère sensible, voire confidentiel, de certaines informations qu'il faudrait publier. Nous ne sommes donc pas favorables à cette rédaction.

De plus, nous restons opposés à l'ajout du considérant.

Article AMF 26, BMVI 23, ISF 22 – Emergency situation

Paragraph 1

Nous pouvons soutenir l'ajout de la référence à l'article 2. La situation d'urgence et les critères de l'éligibilité à l'aide d'urgence devront cependant être définis dans cet article.

Nous ne soutenons pas l'ajout d'une mention de « situation urgente dûment justifiée », qui laisse place à une interprétation subjective de la justification, en particulier en l'absence de critères d'éligibilité clairement définis.

En ce qui concerne l'ajout de la dernière phrase, nous souhaiterions proposer la reformulation suivante : **In response to an emergency situation, the Commission ~~ma~~y ~~decide to~~ *shall* provide emergency assistance within the limits of available resources**

Article AMF 27, BMVI 24, ISF 23 – Cumulative, complementary and combined funding

New title

La rédaction modifiée de l'intitulé emploie des termes qui ne correspondent pas au contenu réel de l'article. Nous sommes opposés à la modification de l'intitulé.

Paragraph 2

Nous ne sommes pas favorables à la suppression de "or" dans la première phrase. Nous pouvons soutenir la rédaction du paragraphe mise à part cette mention.

Recital (horizontal to all directly managed programmes)

Nous émettons une réserve d'examen sur cette question.

Article AMF 28, BMVI 25, ISF 24 – Monitoring and reporting

Paragraph 5

Nous remercions la Commission d'avoir pris en compte le besoin de différer les conséquences des amendements de l'annexe VIII. Cependant, il ne nous semble pas réaliste d'attendre des autorités de gestion et des porteurs de projets d'enregistrer et comptabiliser les indicateurs amendés pour les projets en cours.

Aussi nous proposons une rédaction synthétisant les propositions du Conseil et de la Commission :

*"***Any amendment to Annex VIII shall only start to apply in the first accounting year following the year of adoption of the delegated act** ***and shall apply only to projects selected after its entry into force.*** *".*

GERMANY

Article AMF 7, BMVI 6, ISF 6 – General principles

Paragraph 2

A sensible regulation. However, this task (coordination, coordination with other national instruments, priorities, political priorities, etc.) cannot be carried out by the responsible authorities, but only by a higher authority.

Article AMF 9, BMVI 8, ISF 8 – Thematic Facility (funding under reasoned opinion)

Paragraph 4

Consent.

Article AMF 13, BMVI 12, ISF 12 – Programmes

Paragraph 9 (AMF and ISF) / 15 (BMVI)

Consent.

Article AMF 23, BMVI 20, ISF 19 – Technical assistance

Consent.

Article AMF 25, BMVI 22, ISF 21 – Information, communication and publicity

Paragraph 1

Consent.

Paragraph 2a

Consent.

Article AMF 26, BMVI 23, ISF 22 – Emergency situation

Paragraph 1

Consent.

Article AMF 27, BMVI 24, ISF 23 – Cumulative, complementary and combined funding

New title

Consent.

Paragraph 2

Consent.

Recital (horizontal to all directly managed programmes)

Consent.

Article AMF 28, BMVI 25, ISF 24 – Monitoring and reporting

Paragraph 5

Consent.

HUNGARY

Hungary supports all proposals initiated by the Presidency.

ITALY

The proposals can be supported insofar they are referred to AMF, while a scrutiny reservation is kept for BMVI and ISF.

LATVIA

In the name of compromise, Latvia supports all of the proposed compromise texts on horizontal provisions.

POLAND

We currently have no comments on the proposed changes, however we would like to ask about the reason for changes to the already agreed parts of the regulations (compromise text). Poland indicates the possibility of raising additional reservations in the future.

PORTUGAL

Article AMF 7, BMVI 6, ISF 6 – General principles

Paragraph 2

Considering a negotiating compromisse approach, PT does not oppose the drafting suggestion.

Article AMF 9, BMVI 8, ISF 8 – Thematic Facility (funding under reasoned opinion)

Paragraph 4

Considering a negotiating compromisse approach, PT does not oppose the drafting suggestion.

Article AMF 13, BMVI 12, ISF 12 – Programmes

Paragraph 9 (AMF and ISF) / 15 (BMVI)

PT does not oppose the drafting suggestion.

Article AMF 23, BMVI 20, ISF 19 – Technical assistance

PT does not oppose the drafting suggestion.

Article AMF 25, BMVI 22, ISF 21 – Information, communication and publicity

Paragraph 1

PT does not oppose the drafting suggestion.

Paragraph 2a

PT does not oppose the drafting suggestion.

Article AMF 26, BMVI 23, ISF 22 – Emergency situation

Paragraph 1

PT does not oppose the drafting suggestion.

However, it is important to clarify the wording "duly justified".

Article AMF 27, BMVI 24, ISF 23 – Cumulative, complementary and combined funding

New title

PT does not oppose the drafting suggestion.

In fact, this is cumulative, complementary and combined funding and not alternative funding.

Paragraph 2

PT does not oppose the drafting suggestion.

Recital (horizontal to all directly managed programmes)

PT does not oppose the drafting suggestion.

Article AMF 28, BMVI 25, ISF 24 – Monitoring and reporting

Paragraph 5

PT does not oppose the drafting suggestion.

ROMANIA

Article AMF 7, BMVI 6, ISF 6 – General principles

Paragraph 2

We cannot support it as the text needs more clarity. What is the meaning of „coordinated with national instruments"?

We are looking positive towards the remaining PRES HR proposals on:

Article AMF 9, BMVI 8, ISF 8 – Thematic Facility (funding under reasoned opinion) Paragraph 4

Article AMF 13, BMVI 12, ISF 12 – Programmes Paragraph 9 (AMF and ISF) / 15 (BMVI)

Article AMF 23, BMVI 20, ISF 19 – Technical assistance

Article AMF 25, BMVI 22, ISF 21 – Information, communication and publicity

Article AMF 26, BMVI 23, ISF 22 – Emergency situation

Article AMF 27, BMVI 24, ISF 23 – Cumulative, complementary and combined funding

Article AMF 28, BMVI 25, ISF 24 – Monitoring and reporting

SLOVAKIA

In general Slovakia has no objections to the amendments linked to selected horizontal provisions as outlined in the respective working paper.

SPAIN

Article AMF 7, BMVI 6, ISF 6 – General principles

Paragraph 2

Spain would prefer the following drafting of paragraph 2:

"*The Commission and the Member States ~~shall~~ **may** ensure that the support provided under this Regulation and by the Member States…*"

Article AMF 9, BMVI 8, ISF 8 – Thematic Facility (funding under reasoned opinion)

Paragraph 4

Spain would prefer the following drafting of paragraph 4:

*"For the purposes of Article 18 and Article 19(2) of Regulation (EU) No …/… [CPR], when funding from the thematic facility is implemented in shared management, the Member State ~~shall~~ **may** ensure…"*

Article AMF 13, BMVI 12, ISF 12 – Programmes

Paragraph 9 (AMF and ISF) / 15 (BMVI)

Spain supports the proposed drafting for paragraph 9.

Article AMF 23, BMVI 20, ISF 19 – Technical assistance

Spain supports the reference to CPR Article.

Article AMF 25, BMVI 22, ISF 21 – Information, communication and publicity

Paragraph 1

Spain supports the proposed drafting.

Paragraph 2a

Spain supports the proposed drafting.

Article AMF 26, BMVI 23, ISF 22 – Emergency situation

Paragraph 1

Spain would rather prefer another drafting of these articles. For this reason, we ask the European Commission to propose an alternative drafting clarifying to MS the financial assistance under this figure.

Article AMF 27, BMVI 24, ISF 23 – Cumulative, complementary and combined funding

New title:

Spain supports the change of the title.

Paragraph 2

Spain does not support this amendment since in our view it reduces the possibility of making use of different European Funds.

Article AMF 28, BMVI 25, ISF 24 – Monitoring and reporting

Paragraph 5

Spain accepts the proposed drafting.

SWEDEN

Sweden can accept the suggestions.