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WK 701/2020 REV 2

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WORKING PAPER

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From:	Presidency
To:	JHA Counsellors on Financial Instruments
Subject:	Proposal for a Regulation of the European Parliament and of the Council establishing the Asylum and Migration Fund (AMF) Proposal for a Regulation of the European Parliament and of the Council establishing, as part of the Integrated Border Management Fund, the instrument for financial support for border management and visa (BMVI) Proposal for a Regulation of the European Parliament and of the Council establishing the Internal Security Fund (ISF) – Compromise proposals on the horizontal provisions

Following the meeting of the JHA Counsellors of 28 January 2020, delegations will find enclosed a revised table of the compromise proposals of the horizontal provisions of the abovementioned draft Regulations.

Revised parts are highlighted.

Delegations are asked to send their written comments by 31 January COB.

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COM proposal		EP amendments	Council	Comments/LTT
Article on Thematic Facility AMF 9 BMVI 8 ISF 8 – Funding under reasoned opinion				
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.	AMF (line 139)	3. When funding from the thematic facility is granted in direct or indirect management to Member States, it shall be ensured that selected no funding shall be ensured that selected available for projects are not affected by where there is clear evidence that the legality of those projects, or the legality and regularity of that funding, or the performance of those projects, would be put in doubt as a result of 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. [Am. 94]	No changes	COM horizontal proposal with EP adjustment: When funding from the thematic facility is granted in direct or indirect management to Member States, it shall be ensured that selected operations are not projects affected by a reasoned opinion by the Commission in respect of an infringement <u>proceeding</u> under Article 258 TFEU that put at risk the legality and regularity of expenditure or the performance of projects shall not be selected.
	BMVI (line 164)	3. When funding from the thematic facility is granted in direct or indirect management to Member States, it shall be ensured that selected no funding shall be ensured that selected available for projects are not affected by where there is evidence that the legality of those projects, or the legality and regularity of that funding, or the performance of those projects, would be in doubt as a result of a reasoned opinion by the Commission in respect of an infringement under Article 258 TFEU that puts at risk the legality and regularity of expenditure or the performance of projects. [Am. 74]	No changes	
	ISF (line 174)	3. When funding from the thematic facility is granted in direct or indirect management to Member States, it shall be ensured that selected no funding shall be ensured that selected available for projects are not affected by, where there is clear evidence that the legality of those projects, or the legality and regularity of that funding, or the performance of those projects, would be in doubt as a result of a reasoned opinion issued by the Commission in respect of an infringement procedure under Article 258 TFEU of the TFEU that puts at risk the legality and regularity of expenditure or the performance of projects.. [AM69]	No changes	
4. When funding from the thematic facility is implemented in shared management, the Commission shall, for the purposes of Article 18 and Article 19(2) of Regulation (EU) No .../... [CPR], assess whether the foreseen actions are not affected by a reasoned opinion by the Commission in respect of an infringement under Article 258 TFEU that puts at risk the legality and regularity of expenditure or the performance of the projects.	AMF (line 140)	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 ensure that no funding is available for projects where there is clear evidence that the legality of those projects, or the legality and regularity of that funding, or the performance of those projects would be put in doubt as a result of 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. [Am. 95]		EP suggestion for new wording: When funding from the thematic facility is granted in shared management, the Commission shall, for the purposes of Article 18 and Article 19(2) of the Regulation (EU) No X [CPR], no projects which are affected by a reasoned opinion by the Commission in respect of an infringement proceedings under Article 258 TFEU that puts at risk the legality and regularity of expenditure or the performance of those projects shall be selected. COM horizontal proposal: 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 Commission shall, that assess whether the foreseen actions are not affected by a reasoned opinion by the Commission in respect of an infringement under Article 258 TFEU that puts at risk
	BMVI (line 165)	4. When funding from the thematic facility is implemented in shared management, the Commission shall, for the purposes of Article 18 and Article 19(2) of Regulation (EU) No .../... [CPR], assess whether the foreseen actions are not affected by to ensure that no funding shall be available for projects where there is evidence that the legality of those projects, or the legality and regularity of those projects, or the performance of		

		<i>those projects, would be called in doubt as a result of</i> a reasoned opinion by the Commission in respect of an infringement under Article 258 TFEU that puts at risk the legality and regularity of expenditure or the performance of the projects. [Am. 75]		the legality and regularity of expenditure or the performance of the projects.
	ISF (line 175)	4. When funding from the thematic facility is implemented in shared management, the Commission shall, for the purposes of Article 18 and Article 19(2) of the Regulation (EU) No X [CPR], assess whether the foreseen actions are not affected by <i>ensure that no funding is available for projects, where there is clear evidence that the legality of those projects, or the legality and regularity of that funding, or the performance of those projects, would be in doubt as a result of</i> a reasoned opinion issued <i>issued</i> by the Commission in respect of an infringement procedure <i>procedure</i> under Article 258 TFEU <i>TFEU</i> . of the TFEU that puts at risk the legality and regularity of expenditure or the performance of the projects. [AM70]		

COM proposal		EP amendments	Council	Comments/LTT
Article AMF 13 BMVI 12 ISF 12 – Programmes				
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. CPR, art 17(5) 5. Types of intervention shall be based on a nomenclature set out in Annex I. For programmes supported by the EMFF, AMIF, the ISF and the BMVI, types of intervention shall be based on a nomenclature set out in the Fund-specific Regulations.	AMF (line 173)	Programming as referred to in Article 17(5) of Regulation EU) .../2021 [Common Provisions Regulation], <i>Each national programme</i> shall be based on set out for each specific objective the types of intervention set out in <i>accordance with</i> Table 1 of Annex VI <i>and provide an indicative breakdown of the programmed resources by type of intervention or area of support.</i> [Am. 111]	No changes	<i>Suggested compromise text:</i> Programming as referred to in Article 17(5) of Regulation (EU) No [CPR] shall be based on the types of intervention set out in Table 21 of Annex VI <i>and include an indicative breakdown of the programmed resources by type of action.</i>
	BMVI (line 214)	Programming as referred to in Article 17(5) of Regulation (EU) No .../... [CPR] <i>Each programme</i> shall be based on set out for each specific objective the types of intervention set out in <i>accordance with</i> Table 1 of Annex VI <i>and an indicative breakdown of the programmed resources by type of intervention or area of support.</i> [Am. 98]	No changes	
	ISF (line 219)	Programming as referred to in <i>accordance with</i> Article 17(5) <i>17</i> of Regulation (EU) No X <i>[CPR]</i> , each programme shall be based on set out for each specific objective the types of intervention set out in <i>accordance with</i> Table 1 of Annex VI <i>and an indicative breakdown of the programmed resources by type of intervention or area of support.</i> [AM85]	Programming as referred to in Article 17(5) of Regulation (EU) No [CPR] shall be based on the types of intervention set out in Table 21 of Annex VI.	

COM proposal		EP amendments	Council	Comments/LTT
Article on Technical assistance AMF 23 BMVI 20 ISF 19 – Technical assistance at the initiative of the Commission				
Article 23 Technical assistance at the initiative of the Commission	AMF (line 220)	No changes	No changes	<i>Presidency compromise proposal:</i>

Article 20 Technical assistance at the level of the Commission	BMVI (line 259)			Appropriate horizontal title: “ Technical assistance at the initiative of the Commission ”.
Article 19 Technical assistance at the initiative of the Commission	ISF (line 261)			Horizontal Alignment of title, we would like to hear if delegations would support this proposal.
The Fund/instrument 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%.	AMF (line 221)	No changes	No changes	
	BMVI (line 260)	The instrument may support technical assistance measures implemented at the initiative of, or on behalf of, the Commission. Those measures, <i>namely, preparatory steps, monitoring, supervision, audit, evaluation and all administrative and technical assistance actions necessary for the implementation of this Regulation and, where appropriate with third countries</i> , may be financed at the rate of 100 %. [Am. 109]	No changes	Presidency compromise proposal in case EP doesn’t accept alignment in BMVI and ISF with provisional agreement in AMF: The Fund/instrument may support technical assistance measures implemented at the initiative of, or on behalf of, the Commission, in accordance with Article 29 (1) of Regulation (EU) No ... [CPR]. Those measures may be financed at the rate of 100%.
	ISF (line 262)	The Fund may support technical assistance measures implemented at the initiative of, or on behalf of, the Commission. Those measures, <i>namely preparatory, monitoring, control, audit, evaluation, communication, including corporate communication on the political priorities of the Union in the area of security, visibility and all administrative and technical assistance actions necessary for the implementation of this Regulation and, where appropriate, with third countries</i> , may be financed at the rate of 100%. [AM95]	No changes	Presidency compromise proposal (in line with article 29 CPR): The Fund/instrument may support technical assistance measures implemented at the initiative of, or on behalf of, the Commission. Those measures, namely, preparatory, monitoring, control, audit, evaluation, communication including corporate communication on the political priorities of the Union, visibility and all administrative and technical assistance actions necessary for the implementation of this Regulation and, where appropriate with third countries, may be financed at the rate of 100 %.

COM proposal		EP amendments	Council	
Article AMF 25 BMVI 22 ISF 21 – Information, communication and publicity				
1. The recipient of Union funding shall acknowledge the origin and ensure the visibility of the Union funding, in particular when promoting the actions and their results by providing coherent, effective and proportionate targeted information to multiple audiences, including media and the public.	AMF (line 235)	1. The recipients of Union funding shall acknowledge the origin and ensure the visibility of the Union funding, in particular when promoting promote the actions and their results; by providing coherent, effective and proportionate targeted meaningful information to multiple relevant audiences, including the media and the public in the relevant languages. To ensure the visibility of Union funding, recipients of Union funding shall refer to its origin when communicating on the action. To this end, recipients shall ensure that all communications to the media and the public, display the Union emblem, and explicitly mention the Union’s financial support. [Am. 134]	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.	COM compromise proposal: 1. The recipient of Union funding shall acknowledge the origin and ensure the visibility of the Union funding, in particular when promoting the actions and their results by providing coherent, effective, meaningful and proportionate information to multiple audiences, including the media and the public, having due regard for the requirements of confidentiality and security, in particular the protection of personal data. Accompanying recital: When promoting the actions supported by this [Fund/Instrument], the recipients of Union funding should provide information in the languages relevant to the target audience. To ensure the visibility of Union

	BMVI (line 264)	1. The recipients of Union funding shall acknowledge the origin and ensure the visibility of the Union funding, in particular when promoting promote the actions and their results, by providing coherent, effective and proportionate targeted meaningful information to multiple relevant audiences, including media and the public in the relevant languages. To ensure the visibility of Union funding, recipients of Union funding shall refer to its origin when communicating on the action. To this end, recipients shall ensure that all communications to the media and the public display the Union emblem, and mention explicitly the Union's financial support. [Am. 110]	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 to the applicable law.	funding, recipients of Union funding should refer to its origin when communicating on the action. To this end, recipients should ensure that all communications to the media and the public, display the Union emblem, and explicitly mention the Union's financial support."
	ISF (line 266)	1. The recipient of Union funding shall acknowledge the origin and ensure the visibility of the Union funding, in particular when promoting promote the actions and their results by providing coherent, effective and proportionate targeted meaningful information to multiple relevant audiences, including media and the public in the relevant language. To ensure the visibility of Union funding, recipients of Union funding shall make reference to its origin when communicating the action. To that end, recipients shall ensure that any communication to the media and the general public displays the Union's emblem and mentions explicitly the Union's financial support. [AM96]	1. The recipient of Union funding shall acknowledge the origin and ensure the visibility of the Union funding, in particular when promoting the actions and their results by providing coherent, effective and proportionate targeted information to multiple audiences, including media and the public, except where it is restricted due to its classified or confidential nature, particularly concerning security, public order, criminal investigations and the protection of personal data, according to applicable law.	
2. The Commission shall implement information and communication actions relating to this instrument, its actions and results. Financial resources allocated to this instrument 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.	AMF (line 236)	2. To reach the widest possible audience, the Commission shall implement information and communication actions relating to the Fund and its actions and results. In particular, the Commission shall publish information concerning the development of the annual and multiannual programmes of the thematic facility. The Commission shall also publish the list of operations selected for support under the thematic facility on a publicly available website and shall update that list at least every three months. Financial resources allocated to the Fund shall also contribute to the corporate communication on the implementation of political priorities of the Union, as far as they are related to the objectives of this Regulation. In particular, the Commission may promote best practices and exchange information as regards to the implementation of the instrument. [Am. 135]	No changes	COM compromise proposal: To reach the widest possible audience, Commission shall implement information and communication actions relating to this [Fund/instrument], its actions and results. Financial resources allocated to this instrument 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. <u>Accompanying recital</u> (could be added to the recital on Union Actions): The Commission may use financial resources under this [Fund/instrument] to promote best practices and exchange information as regards to the implementation of the instrument."
	BMVI (line 265)	2. To reach the widest possible audience, the Commission shall implement information and communication actions relating to the implementation of this instrument, its actions and results. In particular, the Commission shall publish information concerning the development of the annual and multiannual programmes of	No changes	

		<i>the thematic facility. The Commission shall also publish the list of operations selected for support under the thematic facility on a publicly available website and shall update that list at least every three months.</i> Financial resources allocated to this instrument shall also contribute to the corporate communication on the implementation of political priorities of the Union, as far as they are related to the objectives of this Regulation. In particular, the Commission may promote best practices and exchange information as regards the implementation of the instrument. [Am. 111]		
	ISF (line 267)	2. To reach the widest possible audience, the Commission shall implement information and communication actions relating to the Fund and its actions and results. In particular, the Commission shall publish information concerning the development of the annual and multiannual programmes of the thematic facility. The Commission shall also publish the list of operations selected for support under the thematic facility on a publicly available website and shall update that list regularly. Financial resources allocated to the Fund shall also contribute to the communication, notably corporate communication, of the political priorities of the Union, as far as they are related to the objectives of this Regulation. [AM97]	No changes	
	AMF (line 236a) BMVI (line 266) ISF (line 268)	2 a. The Commission shall publish the information referred to in paragraph 2 in open, machine readable formats that allow data to be sorted, searched, extracted, compared and reused, as set out in Article 5(1) of Directive 2003/98/EC of the European Parliament and of the Council^{1a}. It shall be possible to sort the data by priority, specific objective, total eligible cost of operations, total cost of projects, total cost of procurement procedures, name of beneficiary and name of contractor.		COM compromise proposal: The Commission shall publish the programmes of the thematic facility. For support provided under direct and indirect management, the Commission shall publish the information referred to in Article 38(2) of Regulation (EU, Euratom) 1046/2018 on a publicly available website and shall update that information regularly. <u>Accompanying recital:</u> The Commission should publish information on the support provided from the thematic facility under direct or indirect management in a timely manner and update this information where appropriate. This information should be published in open, machine readable format which allows data to be sorted, searched, extracted and compared. It shall be possible to sort the data by specific objective, maximum funding from the EU budget and name of beneficiary.

COM proposal		EP amendments	Council	Comments/LTT
Article AMF 26 BMVI 23 ISF 22 – Emergency assistance				
COM proposal – definition of emergency situation in Article on Emergency assistance	AMF (line 239)	Definition in Article 26	Definition in Article 26	H for place (article on defintions vs. relevant article)

^{1a} Directive 2003/98/EC of the European Parliament and of the Council of 17 November 2003 on the re-use of public sector information (OJ L 345, 31.12.2003, p. 90).

	BMVI (line 107/270)	Definition in Article 23	Definition moved to article 2	
	ISF (line 96/271)	Definition in Article 22	Definition moved to article 2	

Article AMF 27, BMVI 24 and ISF 23 - Cumulative, complementary and combined funding				
COM proposal		EP amendments	Council	Comments/LTT
2. Actions awarded a seal of Excellence certification, or which comply with the following cumulative comparable conditions:	AMF (line 248) BMVI (line 279) ISF (line 278)	2. Actions Operations awarded a seal of Excellence certification, or which comply with the following cumulative comparative conditions:	No changes	COM compromise proposal: 2. Actions awarded a seal of Excellence certification, or which comply with the following cumulative comparative conditions:

Article AMF 33, BMVI 30 and ISF 29 – Committee procedure				
COM proposal		EP amendments	Council	Comments/LTT
2. Where reference is made to this paragraph, Article 4 of Regulation (EU) No 182/2011 shall apply.	AMF (line 291)	No changes	2. Where reference is made to this paragraph, Article 5 4 of Regulation (EU) No 182/2011 shall apply. Where the Committee delivers no opinion, the Commission shall not adopt the draft implementing act and the third subparagraph of Article 5(4) of Regulation (EU) No 182/2011 shall apply.	
	BMVI (line 336)		2. Where reference is made to this paragraph, Article 5 4 of Regulation (EU) No 182/2011 shall apply. Where the Committee delivers no opinion, the Commission shall not adopt the draft implementing act and the third subparagraph of Article 5(4) of Regulation (EU) No 182/2011 shall apply.	
	ISF (line 332)		2. Where reference is made to this paragraph, Article 5 4 of Regulation (EU) No 182/2011 shall apply. Where the Committee delivers no opinion, the Commission shall not adopt the draft implementing act and the third subparagraph of Article 5(4) of Regulation (EU) No 182/2011 shall apply.	
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)/27(4)/26(4).	AMF (line 292)	No changes	Deleted	
	BMVI (line 337)	Deleted	Deleted	
	ISF (line 333)	No changes	Deleted	

Article AMF 34, BMVI 31 and ISF 30 – Transitional provisions				
COM proposal		EP amendments	Council	Comments/LTT

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.	AMF (line 294)	No changes	No changes	
1. This Regulation shall not affect the continuation or modification of the actions concerned under the instrument for external borders and visa as part of the Internal Security Fund for the period 2014-2020, established by Regulation (EU) No 515/2014, which shall continue to apply to those actions until their closure.	BMVI (line 339)		No changes	
1. Regulation (EU) No 513/2014 is repealed with effect from 1 January 2021.	ISF (line 335)		Deleted	
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.	AMF (line 295)	No changes	No changes	<u>Presidency compromise on ISF:</u> 1. This Regulation shall not affect the continuation or modification of the actions concerned under the instrument for financial support for police cooperation, preventing and combating crime, and crisis management as part of the Internal Security Fund for the period 2014-2020, established by Regulation (EU) No 513/2014, which shall continue to apply to those actions until their closure. 2. The financial envelope for the instrument may also cover technical and administrative assistance expenses necessary to ensure the transition between the instrument and the measures adopted under its predecessor, the instrument for financial support for police cooperation, preventing and combating crime, and crisis management as part of the Internal Security Fund for the period 2014-2020, as established by Regulation (EU) No 513/2014.
2. The financial envelope for the instrument may also cover technical and administrative assistance expenses necessary to ensure the transition between the instrument and the measures adopted under its predecessor, the instrument for external borders and visa as part of the Internal Security Fund for the period 2014-2020, as established by Regulation (EU) No 515/2014.	BMVI (line 340)	No changes	No changes	
2. Without prejudice to paragraph 1, this Regulation shall not affect the continuation or modification of the actions concerned, until their closure, under the Police Instrument of the Internal Security Fund, which shall continue to apply to those actions concerned until their closure. 3. 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 Police Instrument of the Internal Security Fund established by Regulation (EU) No 513/2014.	ISF (lines 336, 337)	No changes	2. Without prejudice to paragraph 1, this Regulation shall not affect the continuation or modification of the actions concerned, until their closure, under the Police Instrument of the Internal Security Fund, which shall continue to apply to those actions concerned until their closure. 2. This Regulation shall not affect the continuation or modification of the actions concerned, until their closure, under the Police Instrument of the Internal Security Fund, which shall continue to apply to those actions concerned until their closure. 3. 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 Police Instrument of the Internal Security Fund established by Regulation (EU) No 513/2014.	

