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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 Internal Security Fund (ISF) – Compromise proposals

With a view to the informal meeting of the members of the JHA Counsellors on Financial instrument of 20 July 2020, delegations will find enclosed an extract from the 4-column table of the abovementioned draft Regulation relevant to this meeting.

The agenda of the technical meeting, that took place on 10 July 2020, is set out in the Annex.

We would like to have feedback from you in particular on the following lines of the four-column table:

- Line 13 (recital 5): -- whether the Member States could accept the EP proposal?
- Lines 364, 20+45 (Annex II, recitals 10a + 31)), whether the Member States could accept adding the words “such as antisemitism, antiziganism and other forms of racism” in line 45, in which case the EP would drop its amendment in line 20 and accept the Commission compromise text in line 364 (which the Member States have accepted in a previous consultation)?.
- Line 101 (Article 3.2 (a)): whether the Member States could accept the addition of the word "judicial" (as in "judicial and other competent authorities") after the EP has agreed to drop "in particular Europol and Eurojust"?
- Line 208 (Article 12.2): whether the Member States would consider adding some agencies to be consulted, if the EP would agree to drop a number of them?
- Line 233 (Article 15.4): whether Member States could agree to the addition of the words "as applicable" in the end of the paragraph, which is the only AM asked by the EP after it dropped the vulnerability and risk assessment by EBCGA?
- Line 376 (Annex III): whether the Member States could accept changing the wording in the Commission compromise text (accepted by Member States in a previous consultation) from "...unmanned aerial system..." to "malicious use of unmanned aerial systems"?
- Line 388 (Annex IV): whether Member States could accept adding the words "insofar as provided for by Union or Member State law"?

Proposal for a

Regulation of the European Parliament and of the Council establishing the Internal Security Fund

13	(5) To achieve this objective, actions should be taken at Union level to protect people and goods from increasingly transnational threats and to support the work carried out by Member States' competent authorities. Terrorism, serious and organised crime, itinerant crime, drug trafficking, corruption, cybercrime, trafficking in human beings and arms, among others, continue to challenge the internal security of the Union.	(5) To achieve this objective, actions should be taken at Union level to protect people and goods, public spaces and critical infrastructure from increasingly transnational threats and to support the work carried out by Member States' competent authorities. Terrorism, serious and organised crime, itinerant crime, drug and arms trafficking, corruption, money laundering, cybercrime, sexual exploitation, including of children, hybrid threats, as well as chemical, biological, radiological and nuclear threats, trafficking in human beings and arms, among others, continue to challenge the internal security and the internal market of the Union. [AM3]	(5) To achieve this objective, actions should be taken at Union level to protect people and goods, public spaces and critical infrastructure from increasingly transnational threats and to support the work carried out by Member States' competent authorities. Terrorism, serious and organised crime, itinerant crime, drug trafficking, corruption, cybercrime, trafficking in human beings and arms, among others, continue to challenge the internal security of the Union.	Technical. To be aligned with article 3 lines 99ff. EP proposal 30.04.20: “(5) To achieve this objective, actions should be taken at Union level to protect people and goods, public spaces and critical infrastructure from increasingly transnational threats and to support the work carried out by Member States' competent authorities. Terrorism, serious and organised crime, itinerant crime, drug and arms trafficking, corruption, money laundering, cybercrime, sexual exploitation, including of children, hybrid threats, as well as chemical, biological, radiological and nuclear threats, trafficking in human beings and arms, among others, continue to challenge the internal security and the internal market of the Union.”
20		(10 a) Raising awareness among law enforcement personnel about issues related to all forms of racism,		Technical. EP 30.04.20:

		<i>including antisemitism and antiziganism, is a key success factor for internal security. Awareness-raising training and education measures for law enforcement actors should therefore be included in the scope of the Fund in order to increase trust-building capacity at a local level.</i> [AM8]		EP AM to be dropped if words “ <i>such as antisemitism, antiziganism and other forms of racism</i> ” added in line 45
45	(31) To complement the implementation of its policy objective at national level through Member States’ programmes, the Fund should also provide support for actions at Union level. Such actions should serve overall strategic purposes within the scope of intervention of the Fund relating to policy analysis and innovation, transnational mutual learning and partnerships and the testing of new initiatives and actions across the Union.	(31) To complement the implementation of its policy objective at national level through Member States’ programmes, the Fund should also provide support for actions at Union level. Such actions should serve overall strategic purposes within the scope of intervention of the Fund relating to policy analysis and innovation, transnational mutual learning and partnerships and the testing of new initiatives and actions across the Union <i>or among certain Member States. In this regard, cooperation between Member States’ intelligence services should be encouraged with a view to ensure the necessary information exchange to enhance the effectiveness of the fight against terrorism as</i>	(31) To complement the implementation of its policy objective at national level through Member States’ programmes, the Fund should also provide support for actions at Union level. Such actions should serve overall strategic purposes within the scope of intervention of the Fund relating to policy analysis and innovation, transnational mutual learning and partnerships and the testing of new initiatives and actions across the Union.	Technical. Linked to political discussions on lines 104, 125 EP amendments linked to intelligence services to be discussed when the proposed specific objective is discussed EP 30.04.20: EP can accept compromise drafting by COM but wants to add “<i>such as antisemitism, antiziganism and other forms of racism</i>” from EP AM 8 (line 20) which could be dropped as a consequence; the lines between brackets (grey shading) should be discussed together with the EP AM on intelligence cooperation; (31) To complement the implementation of its policy objective at national level through Member States’ programmes, the Fund should also provide support for actions at Union level. Such actions should

		<i>well as serious and organised crime, and to contribute to a better understanding of their cross-border nature. The Fund should support Member States' efforts to exchange best practice and to promote joint training in order to help develop a culture of cooperation and mutual trust between intelligence services as well as between intelligence services and Europol.</i>[AM23]	serve overall strategic purposes within the scope of intervention of the Fund relating to policy analysis and innovation, transnational mutual learning and partnerships and the testing of new initiatives and actions across the Union <i>or among certain Member States</i>. [In this regard, cooperation between Member States' intelligence services should be encouraged with a view to ensure the necessary information exchange to enhance the effectiveness of the fight against terrorism as well as serious and organised crime, and to contribute to a better understanding of their cross-border nature.] The Fund should support Member States' efforts, <u>including at local level, to exchange best practice and to promote joint training, including awareness raising among law-enforcement staff regarding all forms of radicalisation and all forms of discrimination that may could lead to violence, such as antisemitism, antiziganism and other forms of racism.</u> For this purpose, specialised exchange programmes for junior law-enforcement staff could be funded. <u>in order to help develop a culture of cooperation and mutual trust between intelligence services as</u>
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				<i>well as between intelligence services and Europol.]*</i> COM 03.06.20: considers this as a good way forward
101	(a) to increase the exchange of information among and within the Union law enforcement and other competent authorities and other relevant Union bodies as well as with third countries and international organisations;	(a) to increase improve and facilitate the exchange of relevant and accurate information among and within the Union law enforcement and judicial authorities of the Member States, other competent authorities of the Member States and other relevant Union bodies, in particular Europol and Eurojust, and, where relevant, as well as with third countries and international organisations; [AM44]	(a) to increase enhance the exchange of information among and within the Union law enforcement and other competent authorities and other relevant Union bodies as well as with third countries and international organisations and to enhance the related capacities of the Member States;	T → P 15.04.20: CNS drafting proposal: “(a) to improve and facilitate the exchange of information among and within law enforcement and other competent authorities of the Member States and relevant Union bodies and, where relevant, with third countries and international organisations in order to enhance the related capacities of the Member States.” EP proposal 30.04.20: (a) to increase improve and facilitate the exchange of information among and within the Union law enforcement, judicial and other competent authorities of the Member States and other relevant Union bodies as well as and, where relevant, with third countries and international organisations in order to enhance the related

				capacities of the Member States; EP can agree to drop “<i>in particular Europol and Eurojust</i>” but insists on “<i>judicial authorities</i>” as these are not necessarily covered by “other competent authorities” under art. 87 TFEU (see highlighted addition); CSL addition at the end (“in order...”) to be rejected as it overlaps with the specific objective on capacity-building COM 03.06.20: is ready to accept this addition of ‘judicial’
208	2. The Commission shall ensure that the Union Agency for Law Enforcement Cooperation (Europol), the European Union Agency for Law Enforcement Training (CEPOL) and the European Monitoring Centre for Drugs and Drug Addiction (EMCDDA) are associated to the development of the programmes at an early stage, as regards the areas of their competence. Specifically, Member States shall consult Europol on the design of their actions in particular when including EU policy cycle or EMPACT actions or actions coordinated by the Joint Cybercrime Action Taskforce (J-CAT) in their programmes. Prior to including training in their programmes, Member	2. The Commission shall ensure that the Union Agency for Law Enforcement Cooperation (Europol), the European Union Agency for Law Enforcement Training (CEPOL), <i>the European Union Agency for Criminal Justice Cooperation (Eurojust), the European Public Prosecutor's Office (EPPO), the European Union Network and Information Security Agency (ENISA), the European Agency for the operational management of large-scale IT Systems (eu-LISA), the European Border and Coast</i>	2. <i>At an early stage of the programming,</i> the The Commission shall consult ensure that the Union Agency for Law Enforcement Cooperation (Europol), the European Union Agency for Law Enforcement Training (CEPOL) and the European Monitoring Centre for Drugs and Drug Addiction (EMCDDA) are associated to the development of the programmes consulted at an early stage, as regards the areas of their competence.	Council: T, H, including all agencies would delay preparation and implementation, unclear how relevance would be determined; civil society covered by partnership in CPR EP: Technical → Political, sticks to its position; several agencies initially not included are relevant COM: T + H, agencies need the necessary mandate, it might stretch their resources; consult only if

	States shall coordinate with CEPOL in order to avoid overlaps.	<i>Guard Agency (EBCGA), the European Union Agency for Fundamental Rights (FRA)</i> and the European Monitoring Centre for Drugs and Drug Addiction (EMCDDA) are associated to the <i>involved in the programme</i> development of the programmes at an early stage <i>from the outset</i>, as regards the areas of their competence. Specifically, Member States shall consult Europol on the design of their actions in particular when including EU policy cycle or EMPACT actions or actions coordinated by the Joint Cybercrime Action Taskforce (J-CAT) in their programmes. Prior to including training in their programmes, Member States shall coordinate with CEPOL in order to avoid overlaps. <i>Members States shall also consult other relevant stakeholders, including civil society organisations, on the planning of their actions.</i> [AM79]		relevant; in CPR discussions on new enabling condition on partnership 9.7.2020: COM: consultation of some agencies are easier (eu-LISA, EBCGA)... EP: to go back and see if some agencies can be dropped. CNS: consult internally whether to accept consultation of some of the agencies
209			2a. Specifically <i>In order to avoid overlaps</i>, Member States shall consult <i>inform</i> Europol, or EMCDDA or CEPOL on the design of their actions <i>when</i>	Council: T EP: Technical → Political

			<i>including in their programmes EU Policy Cycle operational actions or other actions related to the areas of competence of the abovementioned agencies in particular when including EU policy cycle or EMPACT actions or actions coordinated by the Joint Cybercrime Action Taskforce (J-CAT) in their programmes. Prior to including training in their programmes, Member States shall coordinate with CEPOL in order to avoid overlaps.</i>	Split of paragraph and Council rewording on EU Policy Cycle in principle ok COM: T + H 15.04.20: CNS: lines 208, 209 and 210 - Waiting for COMP proposal by COM
210	3. The Commission may associate the Union Agency for Law Enforcement Cooperation (Europol), the European Union Agency for Law Enforcement Training (CEPOL) and the European Monitoring Centre for Drugs and Drug Addiction (EMCDDA) where appropriate in the monitoring and evaluation tasks as specified in Section 5 in particular in view of ensuring that the actions implemented with the support of the Fund are compliant with the relevant Union <i>acquis</i> and agreed Union priorities.	3. The Commission may associate the Union Agency for Law Enforcement Cooperation (Europol), the European Union Agency for Law Enforcement Training (CEPOL) and the European Monitoring Centre for Drugs and Drug Addiction (EMCDDA) Agencies referred to in paragraph 2, the European Data Protection Board and the European Data Protection Supervisor (EDPS) where appropriate in the monitoring and evaluation tasks as specified in Section 5 in particular in view of ensuring that the actions implemented with the support of the Fund, <i>which fall within</i>	3. The Commission may associate the Union Agency for Law Enforcement Cooperation (Europol), the European Union Agency for Law Enforcement Training (CEPOL) and the European Monitoring Centre for Drugs and Drug Addiction (EMCDDA) where appropriate in the monitoring and evaluation tasks as specified in Section 5 in particular in view of ensuring that the actions implemented with the support of the Fund are compliant with the relevant Union <i>acquis</i> and agreed Union priorities.	Council: T, to reflect, depending on the outcome of 208 and 209, EP: Technical → Political See line 208 COM: T + H, lack of resources of agencies, EDPB more relevant than EDPS 15.04.20: CNS: lines 208, 209 and 210 - Waiting for COMP proposal by COM

		<i>their mandate</i> , are compliant with the relevant Union acquis and agreed Union priorities.[AM80]		
233	4. Member States shall justify in the programme and in the annual performance reports, as referred to in Article 26, the use of operating support to achieve the objectives of this Regulation. Before the approval of the programme, the Commission shall assess the baseline situation in the Member States which have indicated their intention to request operating support, taking into account the information provided by those Member States as well as recommendations from quality control and evaluation mechanisms such as the Schengen evaluation mechanism and other quality control and evaluation mechanisms.	4. Member States shall justify in the programme and in the annual performance reports, as referred to in Article 26, the use of operating support to achieve the objectives of this Regulation. Before the approval of the programme, the Commission shall assess the baseline situation in the Member States which have indicated their intention to request operating support, taking into account the information provided by those Member States as well as recommendations from quality control and evaluation mechanisms such as: the Schengen evaluation mechanism, <i>the vulnerability and risk assessment by the European Border and Coast Guard Agency (EBCGA)</i> and other quality control and evaluation mechanisms, <i>as applicable</i> . [AM91]	4. Member States shall justify in the programme and in the annual performance reports, as referred to in Article 26, the use of operating support to achieve the objectives of this Regulation. Before the approval of the programme, the Commission shall assess the baseline situation in the Member States which have indicated their intention to request operating support, taking into account the information provided by those Member States as well as recommendations from quality control and evaluation mechanisms such as the Schengen evaluation mechanism and other quality control and evaluation mechanisms.	T EP 30.04.20: can agree to drop EBCG-A assessments from its position, but maintains "as applicable" in the end. “Member States shall justify in the programme and in the annual performance reports, as referred to in Article 26, the use of operating support to achieve the objectives of this Regulation. Before the approval of the programme, the Commission shall assess the baseline situation in the Member States which have indicated their intention to request operating support, taking into account the information provided by those Member States as well as recommendations from quality control and evaluation mechanisms such as the Schengen evaluation mechanism, <i>the vulnerability and risk assessment by the European Border and Coast Guard Agency (EBCGA)</i> and other quality control and evaluation mechanisms, <i>as applicable</i> .”

				COM 03.06.20: OK
364	(a) to increase law enforcement training, exercises, mutual learning, specialised exchange programmes and sharing of best practice including in and with third countries and other relevant actors;	(a) to increase law enforcement training, exercises, mutual learning, specialised exchange programmes and sharing of best practice including in and with third countries and other relevant actors; [AM119] (a) increasing law enforcement training, exercises and mutual learning, notably by including elements aimed at raising awareness on issues related to radicalisation, violent extremism and racism, specialised exchange programmes between Member States, including for junior law-enforcement staff, and sharing of best practice including with third countries and other relevant actors; [AM50]	(a) to increase law enforcement training, exercises, mutual learning, specialised exchange programmes and sharing of best practice including in and with third countries and other relevant actors;	T, P, H the method and the place Council – examples not necessarily needed, open to possibility of covering them in recitals CION compromise drafting (19/12): "(a) to increasing law enforcement training, exercises, mutual learning, specialised exchange programmes between Member States and sharing of best practice including in and with third countries and other relevant actors;" TM 04.02.20 EP (lines 364/365): proposes to move LE exchange programmes and awareness raising on radicalisation to recital 31 (line 45); since ‘crime prevention’ is a specific objective of the Fund and ‘sharing of best practice’ should apply to different areas, the EP addition to line 365 (EP: line 120) can be deleted and the ‘local’ level added to line 365 as well as recital 31. COM – considers radicalisation and racism to be too specific to be included:

			PUBLIC (a) <i>increasing</i> law enforcement training, exercises, and mutual learning, including awareness-raising on radicalisation and racism, notably... 15.04.20: CNS could be flexible. EP 30.04.20: can accept the COMP proposal of the Commission if the EP proposal on line 45 with the addition of racism is accepted by CNS <i>“increasing law enforcement training, exercises and mutual learning notably by including on elements aimed at raising awareness on issues related to radicalisation, violent extremism and racism, specialised exchange programmes between Member States, including for junior law enforcement staff, and sharing of best practice in and between Member States, including at local level, and with third countries and other relevant actors;”</i> COM 03.06.20: COM considers this as a good way forward
376		— <i>actions that promote research and exchange of expertise improving resilience</i>	T, P

		<i>to emerging threats including trafficking via online channels, hybrid threats and chemical, biological, radiological and nuclear threats.</i>[AM126]	 COM suggestion: “<i>actions that promote research and exchange of expertise improving improve resilience to emerging threats including trafficking via online channels, hybrid threats, <u>unmanned aerial system</u> and chemical, biological, radiological and nuclear threats</i>” Presidency will discuss with MS 15.04.20: CNS can support COM suggestion. EP 30.04.20: can accept COM proposal but asks for more precise wording regarding ‘unmanned aerial systems’ to cover only those systems which pose a security threat. "Easy Access Rules for Unmanned Aircraft Systems" (Regulation (EU) 2019/947 and Regulation (EU) 2019/945), will enter into force on 1st July 2020. COM 03.06.20: would propose: ‘<i>malicious use of unmanned aerial systems</i>’ CNS to consult internally whether to accept "malicious use of unmanned aerial systems"
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388	Projects which aim at improving the interoperability of IT systems and communication networks.¹	— Projects which aim at improving the interoperability of IT systems and communication networks, <i>insofar as provided for by Union or Member State law</i>. [AM133]	Projects which aim at improving the interoperability of ICT systems and communication networks.²	T EP 30.04.20: insists to <u>keep the AM</u> as it has to be ensured that funding of such systems is based on legislation; “projects which aim at improving the interoperability of IT systems and communications networks, <i>insofar as provided for by Union or Member State law</i>” COM 03.06.20: Should we modify the wording to be consistent and say ‘<i>interoperability of EU information systems and communication networks</i>’ Question: does the addition ‘insofar as...’ cover also MS national components? EP: Yes
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¹ In line with the Commission Communication on stronger and smarter information systems for borders and security COM(2016) 205.

² ~~In line with the Commission Communication on stronger and smarter information systems for borders and security COM(2016) 205.~~

09.07.2020

10 July 2020

(10:00 - 13:00)

Council (Justus Lipsius building; meeting room 50.7)

Technical meeting

on Internal security fund (ISF)

AGENDA

1. Adoption of the agenda

2. Provisions

- Definitions lines (88, 90+ 15, 97 r)
- Article 3.1 (line 99 +13, 22)
- Article 3.2 a -ca (lines101-104)
- Article 4(1) (line 128)
- Article 4.3 (a) (line 133)
- Article 4.3 (d) (line 136)
- Article 12.2-3 (lines 208-210)
- Article 12.5 a-b (lines 213-214)
- Article 15.4-5 (line 233)
- Annex II (364 + 20, 45)
- Annex III (line 376)
- Annex IV (lines 387-388, 389, 390-391)

3. AOB