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WORKING DOCUMENT

From:	General Secretariat of the Council
To:	JHA Counsellors on Financial Instruments
N° Cion doc.:	10153/18 + ADD 1
Subject:	Proposal for a Regulation of the European Parliament and of the Council establishing the Asylum and Migration Fund

With a view to the informal videoconference meeting of members of the JHA Counsellors on Financial Instruments on 20 July, delegations will find attached the updated status of the relevant lines from the AMF proposal discussed at the technical meeting with the European Parliament on 7 July 2020.

20/07/2020

post AMF technical meeting on 07/07/2020

LEGEND

	ST 10153/18 + ADD 1 (COM proposal – 471 final/ 471 FV 2)	A8-0106/2019 EP Position at the first reading adopted on 13/03/2019	ST 10148/19 Partial general approach (JHA Council on 7 June 2019) ¹	LEGEND
1.				Not agreed
2.				Provisionally agreed
3.				Horizontal provision Not agreed
N.				Horizontal provision Provisionally agreed

¹ Text in square brackets [...] is not subject to the partial general approach

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

2018/0248 (COD)

	ST 10153/18 + ADD 1 (COM proposal – 471 final/ 471 FV 2)	A8-0106/2019 EP Position at the first reading adopted on 13/03/2019	ST 10148/19 Partial general approach (JHA Council on 7 June 2019)²	
1.	Proposal for a		Proposal for a	
2.	REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL	REGULATION (EU) 2019/... OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL	REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL	
3.	establishing the Asylum and Migration Fund	establishing the Asylum, and Migration and Integration Fund [Am. 1]	establishing the Asylum, and Migration and Integration Fund	Title provisionally agreed across the proposal.
77.	<i>Article 2 Definitions</i>	Article 2 Definitions	<i>Article 2 Definitions</i>	
78.	For the purpose of this Regulation, the following definitions shall apply:	For the purpose of this Regulation, the following definitions shall apply	For the purpose of this Regulation, the following definitions shall apply:	
88a		<i>(ja) ‘unaccompanied minor’ means a minor who arrives on the territory of the Member States unaccompanied by an</i>		Provisional agreement reached at the technical meeting on 7 July 2020: "(ja) 'unaccompanied minor' means an unaccompanied minor as defined

² Text in square brackets [...] is not subject to the partial general approach

		<i>adult responsible for him or her whether by law or by the practice of the Member State concerned, and for as long as he or she is not effectively taken into the care of such an adult, including a minor who is left unaccompanied after he or she has entered the territory of the Member States. [Am. 67]</i>		in point (l) of Article 2 of Directive 2011/95/EU."
90.	<i>Article 3 Objectives of the Fund</i>	Article 3 Objectives of the Fund	<i>Article 3 Objectives of the Fund</i>	
91.	1. The policy objective of the Fund shall be to contribute to an efficient management of migration flows in line with the relevant Union <i>acquis</i> and in compliance with the Union's commitments on fundamental rights.	1. The policy objective of the Fund shall be to contribute to an efficient management of migration flows implementation, strengthening and development of all aspects of the common European asylum policy under Article 78 TFEU and of the common European immigration policy under Article 79 TFEU in line with the relevant Union <i>acquis</i> and in compliance with principle of solidarity and fair-sharing of responsibility, while fully respecting the Union's commitments on and the Member States' obligations under international law and the rights and principles enshrined in the Charter of Fundamental	1. The policy objective of the Fund shall be to contribute to an efficient management of migration flows in line with the relevant Union <i>acquis</i> and in compliance with the Union's commitments on fundamental rights.	Technical -> political Following further clarifications from the EP and the Council, the Commission suggested the term 'obligations' instead of 'commitments' as a possible compromise: The EP points out that that compromise does not address the first part of the EP amendment and is not sufficient on the second part of the EP amendment. <u>The EP to suggest possible compromise to the references to obligations under international law and the Charter of Fundamental Rights comparable to Article 3(4)</u>

		Rights <i>of the European Union</i> . [Am. 68]	PUBLIC <u>of the ISF(Borders)Regulation (EU) No 515/2014.</u> EP Rapporteurs’s proposal: The policy objective of the Fund shall be to contribute to [an efficient management of migration flows <i>implementation, strengthening and development of all aspects of the common European asylum policy under Article 78 TFEU and of the common European immigration policy under Article 79 TFEU</i> in line with the relevant Union acquis and in compliance with <i>principle of solidarity and fair-sharing of responsibility</i>], while fully <i>respecting</i> the relevant Union acquis and the international obligations of the Union <i>and the Member States arising from international instruments to which they are signatory.</i> As regards the reference to the Charter of Fundamental Rights and international obligations in lines 91 and 165, a provisional agreement was reached on 7 July 2020 as follows, and subject to an agreement on a new recital on the
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				UN Convention on the Rights of the Child: "...while fully respecting the relevant Union acquis and the international obligations of the Union and the Member States arising from international instruments to which they are signatory."
96a		<i>Article 3a Partnership</i>		EP presented alternative wording to be considered by Council (5/11/2019). Council prefers to await outcome of negotiations on Partnerships under the CPR. EP affirms that an addition in AMIF is appropriate and that there is no need to wait for CPR.
96b		<i>For this Fund, partnerships shall include at least local and regional authorities or their representative associations, relevant international organisations, non-governmental organisations, in particular refugee and migrants organisations, national human rights institutions and equality bodies, and economic and social partners.</i>		Technical -> political The EP suggested a compromise at the political trilogue of 5/11. In light of subsequent technical discussions, the EP's compromise proposal refers to the provisional agreement of the co-legislators on Article 6 CPR and could be adjusted to read as follows: <i>"For this Fund, partnerships shall, pursuant to point (c) of Article 6(1) of [the CPR], include at least</i>

				<i>regional, local, <u>urban and other public authorities</u> [or their representative associations], relevant international organisations, non-governmental organisations, in particular refugee and migrant-led organisations, national human rights institutions and equality bodies, and economic and social partners."</i> Further discussions might be necessary at the political level. <u>The Council can support the latest compromise proposal subject replacing 'in particular' with 'such as'.</u> <u>The EP took note of the Council's counterproposal and will come back.</u>
96c		<i>These partners shall be involved in a meaningful way in the preparation, implementation, monitoring and evaluation of programmes. [Am. 73]</i>		Technical -> political See line 96b
100a		<i>Article 4a Gender equality and non-discrimination</i>		Technical -> political
100b		<i>The Commission and the Member States shall ensure that gender equality and the</i>		Technical -> political

		<i>integration of the gender perspective are an integral part of, and are promoted during, the various stages of the implementation of the Fund. The Commission and the Member States shall take all appropriate steps to prevent any discrimination based on sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or other opinion, membership of a national minority, property, birth, disability, age or sexual orientation in access to the Fund and during the various stages of the implementation of the Fund. [Am. 79]</i>	PUBLIC	The Council considers this issue part of the overall discussions on human and fundamental rights. EP will consider the language of Article 6a CPR with respect to shared management. Following request by the co-legislators, the Commission proposed the following possible compromise text that corresponds to Article 6a (new) CPR as provisionally agreed by co-legislators and lists the discrimination grounds of Article 19 TFEU: 1. "The Member States and the Commission shall ensure that equality between men and women, gender mainstreaming and the integration of gender perspective are taken into account and promoted throughout the preparation, implementation, monitoring, reporting and evaluation of programmes and projects. 2. The Member States and the Commission shall take appropriate steps to exclude any discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation during the
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			preparation, implementation, monitoring, reporting and evaluation of programmes and projects. " Council expressed doubts with the term 'and promoted' in paragraph 1 in the specific context of AMF. EP confirms the term “promote” as opposed to “neglect” or “counter”. <u>Both co-legislators to discuss further internally.</u> <u>EP Rapporteur proposes to accept the Comm proposal with the following changes in para 2 (following the Charter of Fundamental Rights).</u> "2. The Member States and the Commission shall take appropriate steps to exclude any discrimination based on sex, <u>race, colour, racial or ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth,</u> disability, age or sexual orientation during the preparation, implementation,
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				monitoring, reporting and evaluation of programmes and projects." <u>To be discussed at the political level.</u>
107.	<i>Article 6 Eligible entities</i>	Article 6 Eligible entities	Article 6 Eligible entities	
116.	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.	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 <i>when this contributes to the achievement of the objectives of the Fund as laid down in Article 3 of this Regulation.</i> [Am. 85]	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.	Horizontal Council moved to Article 18a Technical -> political See line 204j Commission: according to current practice third country entities are beneficiaries only in consortia with entities from MS. <i>EP: as mentioned in line 204j, the EP could accept the Council text. However, there remains a need to clarify if this applies to any third country not mentioned in the WP; it should be added that legal entities of third countries are beneficiaries only in consortia with entities from MS</i> In AMF, Council open to clarify that this only applies to third countries identified in the work programme

				and that only entities in consortium with entities from Member States are to be eligible. EP was positive but clarified that this issue is horizontal and need to be looked at horizontally. <u>To be examined at a horizontal meeting.</u>
129	<i>Article 9</i> General provisions on the implementation of the thematic facilit	Article 9 General provisions on the implementation of the thematic facility	<i>Article 9</i> General provisions on the implementation of the thematic facility	
138.	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.	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 <i>and through the eligible actions in Annex III.</i>	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, <i>including the overall migratory evolution.</i>	Technical -> political Provisional agreement reached at the technical meeting on 7 July on the basis of the original COM proposal: <u>"2.</u> 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."
138a		<i>The Commission shall ensure regular engagement with civil society organisations in the preparation, implementation, monitoring and evaluation of work programmes</i>		Political COM to propose a possible compromise proposal in lines 63a and 138a.

154.	<i>Article 12</i> Co-financing rates	Article 12 Co-financing rates	<i>Article 12</i> Co-financing rates	
155.	1. The contribution from the Union budget shall not exceed 75 % of the total eligible expenditure of a project.	1. The contribution from the Union budget shall not exceed 75 % of the total eligible expenditure of a project. <i>Member States are encouraged to provide matching funds for activities supported by the Fund. [Am. 101]</i>	1. The contribution from the Union budget shall not exceed 75 % of the total eligible expenditure of a project.	Technical -> Political Horizontal Provisional agreement reached at the technical meeting on horizontal matters on 14 July 2020 on this basis: "1. The contribution from the Union budget shall not exceed 75 % of the total eligible expenditure of a project." The provisional agreement includes a new recital as follows: <u>"In addition to the co-financing rate provided by the Fund for projects, Member States are encouraged to provide funding from the budget of national public authorities where such funding is essential for a project to be carried out, particularly when the project is implemented by a civil society organisation."</u>
157.	3. The contribution from the Union budget may be increased to 90 % of the total	3. The contribution from the Union budget <i>shall be increased to a minimum of 80 % and</i> may	3. The contribution from the Union budget may be increased to 90 % of the total eligible	Technical -> political Horizontal

	eligible expenditure for actions listed in Annex IV.	be increased to 90 % of the total eligible expenditure for actions listed in Annex IV. [Am. 102]	expenditure for actions listed in Annex IV.	This issue requires further discussion. <u>The Commission to send explanation in writing to both co-legislators.</u> <u>The EP to come back.</u>
164.	Article 13 Programmes	Article 13 Programmes	<i>Article 13</i> Programmes	
165.	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 <i>acquis</i> 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.	1. Each Member State and the Commission shall ensure that the priorities addressed in its the national programme are consistent with, and respond to, the Union priorities and challenges in the area of asylum and migration management, and are fully in line with the relevant Union <i>acquis</i> and agreed the international obligations of the Union priorities and Member States arising from international instruments to which they are signatories, in particular the UN Convention on the Rights of the Child. In defining the priorities of their programmes Member States shall ensure that the implementation measures set out	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 <i>acquis</i> and agreed Union priorities, while taking into account the specific context of each Member State. In defining the priorities of their programmes Member States shall ensure that the implementation measures set out in Annex II are adequately addressed.	Technical -> political Reference to 'the Commission' in the first sentence is horizontal. The EP notes on-going discussions in BMVI in which Commission has shown a willingness to be referenced here but not at the same level as the Member States. <u>The EP will propose a possible compromise at the horizontal level with regard to the addition of the Commission.</u> <u>The EP will further reflect on the need for the reference to “national” programmes.</u> The Commission suggested 'migration management, including

		in Annex II are adequately addressed.		asylum' as a possible reference for better clarity. The EP suggest referring simply to 'asylum and migration'. As regards the reference to the Charter of Fundamental Rights and international obligations in lines 91 and 165, a provisional agreement was reached on 7 July 2020 as follows, and subject to an agreement on a new recital on the UN Convention on the Rights of the Child: "...while fully respecting the relevant Union acquis and the international obligations of the Union and the Member States arising from international instruments to which they are signatory."
178.	<i>Article 15 Specific actions</i>	Article 15 Specific actions	<i>Article 15 Specific actions</i>	Horizontal
179.	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.	1. Specific actions are transnational or national projects <i>bringing Union added value</i> in line with the objectives of this Regulation for which one, several or all Member States may receive an additional allocation to their programmes. [Am. 117]	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.	Technical <u>Council to discuss internally.</u>

197.	Article 18 Operating support	Article 18 Operating support	<i>Article 18</i> Operating support	
200.	3. The Member States using operating support shall comply with the Union <i>acquis</i> on asylum and return.	3. The Member States using operating support shall comply with the Union <i>acquis</i> on asylum and return <i>immigration and fully respect the rights and principles enshrined in the Charter of Fundamental Rights of the European Union.</i> [Am. 124]	3. The Member States using operating support shall comply with the Union <i>acquis</i> on asylum and return.	Technical -> political Reference to Charter to be discussed as part of the overall approach on such reference. Linked to Annex VII and Council's proposal in line 462. Unclear what 'immigration acquis' refers to. EP points out that the immigration <i>acquis</i> would logically refer to all those measures adopted under Article 79 TFEU. The EP further notes the absence of a Treaty Article on Returns or even a mention of the word Return in the relevant Treaty Articles. To be discussed further
204.	SECTION 3 SUPPORT AND IMPLEMENTATION UNDER DIRECT AND INDIRECT MANAGEMENT	SECTION 3 SUPPORT AND IMPLEMENTATION UNDER DIRECT AND INDIRECT MANAGEMENT	SECTION 3 SUPPORT AND IMPLEMENTATION UNDER DIRECT AND INDIRECT MANAGEMENT	

204a.			<i>Article 18a</i> <i>Eligible entities</i>	<u>The EP to discuss location internally following explanations by COM and Council.</u>
204j			<i>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.</i>	Technical -> political Location not agreed Refer to EP amendment 85 in line 116. The Commission and Presidency have pointed out that all actions funded under AMIF must contribute to the achievement of the objectives of the Fund. EP Rapporteur proposes to accept Council text without prejudice to the correct location of this provision and the EP comment in line 116.
207.	Article 20 Union actions	Article 20 Union actions	<i>Article 20</i> Union actions	Horizontal
211a		<i>4a. The Commission shall ensure flexibility, fairness and transparency in the distribution of resources among the objectives referred to in Article 3(2). [Am. 129]</i>		Political

217a		<i>Article 21a Amendment of Decision 2008/381/EC</i>		Technical -> political <u>The EP to propose an alternative compromise proposal.</u>
217b		<i>The following point is added in Article 5(5) of Decision 2008/381/EC:</i>		Technical -> political See line 217a.
217c		<i>“(da) act as a contact point for potential beneficiaries of funding under the Asylum, Migration and Integration Fund Regulation and provide impartial guidance, practical information and assistance regarding all aspects of the Fund, including in relation to applications for funding under the relevant national programme or the thematic facility.”. [Am. 132]</i>		Technical -> political See line 217a.
387.	<u>ANNEX IV</u> <u>Actions eligible for higher co- financing in line with Articles 12(2) and 13(7)</u>	ANNEX IV Actions eligible for higher co- financing in line with Articles 12(2) and 13(7)	<u>ANNEX IV</u> <u>Actions eligible for higher co- financing in line with Articles 12(2 3) and 13(7)</u>	After consultations to be discussed again at technical level.
389.	– Actions to develop and implement effective alternatives to detention;	– Actions to develop and implement effective alternatives to detention <i>and institutional care</i> ; [Am. 229]	– Actions to develop and implement effective alternatives to detention;	Technical After consultations to be discussed again at technical level. Following the request by both co- legislators, the Commission proposed

				a possible compromise text to AM 229 in line 391 below. In the spirit of compromise, the Council can support the Commission compromise text to AM 229 in line 391 below. <u>Further discussions necessary.</u>
391.	– 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	– 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 <i>minors</i>. [Am. 230]	– 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;	Technical After consultations to be discussed again at technical level. To look at use of terminology, mainly between 'children' and 'minors'. In this regard, the Council suggested: "...to ensure effective protection of minors, in particular unaccompanied minors." EP maintains that the correct term to use here is minor. Following the request by both co-legislators, the Commission proposed the following addition at the end of the point as possible compromise text to AM 229: "...those unaccompanied, <i>including through alternative, non-institutionalised care systems</i>;"

				<i>Note: This is without prejudice to the amendments proposed by both co-legislators.</i> In the spirit of compromise, the Council can support the Commission compromise additional text to AM 229. <u>Further discussions necessary.</u>
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