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WORKING PAPER

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WORKING DOCUMENT

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)

Delegations will find attached suggestions from the Presidency regarding the three MFF Home Affairs proposals (AMF, BMVI and ISF).

Changes compared to the previous document are marked in **bold underlined**.

Based on the results of the special meeting of the European Council (17-21 July 2020, EUCO10/20) the Presidency proposes the following additions to the Asylum and Migration Fund, the Internal Security Fund and the Border Management and Visa Instrument. These are intended to be discussed in the informal videoconference of the members of JHA Counsellors on Financial instruments on **1**1 September **for the second time**.

Delegations are kindly requested to send their comments on the Presidency proposal to the Presidency (jens.schumacher@diplo.de; pol-in1-5-eu@brue.auswaertiges-amt.de) and to the General Secretariat of the Council (MFF-Home@consilium.europa.eu) by **Wednesday 9 September 2020.**

1. Implementation of EUCO 10/20 No. 70 – Pre-financing

EUCO 10/20 states: "For the Asylum and Migration Fund, the Internal Security Fund and the Border Management and Visa Instrument a specific pre-financing rate will be set out."

This requires an **update of Article 84 of the Common Provisions Regulation**. The presidency will add an appropriate text like the current para 3 of Article 84 CPR ("By way of derogation from paragraph 2, for Interreg programmes, specific rules on pre-financing shall be set out in the ETC Regulation."). The objective is to derogate only from the CPR article 84(2) - CPR articles 84(1), (4) and (5) should continue to apply to the HOME funds.

The Presidency proposes the following additions to AMF, BMVI and ISF proposals:

AMF new Article 11a, BMVI and ISF new article 10a *Pre-financing*

"In accordance with Article 84(3) of Regulation EU…/…[CPR], the pre-financing for [the Fund/Instrument] shall be paid in yearly instalments before 1 July of each year, subject to the availability of funds, as follows:

(a) 2021: 5%

(b) 2022: 5%

(c) 2023: 5%

(d) 2024: 5%

(e) 2025: 5%

(f) 2026: 5%

Where a programme is adopted after 1 July 2021, the earlier instalments shall be paid in the year of adoption."

AMF Article 26(3), BMVI Article 23(3), ISF Article 22(3) Addition *Pre-financing of emergency assistance*

"Emergency assistance may be allocated to Member States' programmes in addition to their allocation calculated in accordance with Article 10(1), provided that it is consequently earmarked as such in the programme. This funding shall not be used for other actions in the programme except in duly justified circumstances and as approved by the Commission through the amendment of the programme. **Pre-financing for emergency assistance may amount to 95% of the Union contribution, subject to the availability of funds."**

Accompanying recital (AMF 48a, BMVI 50a, ISF 38a)

“A pre-financing scheme for the Fund/instrument is set out in Regulation EU…/….[CPR] with a specific pre-financing rate set out in this Regulation. In addition, in order to ensure a prompt reaction to an emergency situation, it is appropriate to set up a specific pre-financing rate for emergency assistance. The pre-financing scheme should ensure that a Member State has the means to provide support to beneficiaries from the start of the implementation of the programme.”

2. Implementation of EUCO 10/20 No. 106 - Amendment of Annex I of AMF and BMVI

EUCO 10/20 states: “In view of the special needs of those Member States who have experienced the highest number of asylum applications per capita in 2018 and 2019, it is appropriate to increase the fixed amounts for Cyprus, Malta and Greece to EUR 25 million in the Asylum and Migration Fund and to EUR 25 million in the Integrated Border Management Fund.” **According to No. 3 “All figures are expressed using constant 2018 prices. There will be automatic annual technical adjustments for inflation using a fixed deflator of 2%.”**

Accordingly, for AMF the following is proposed (based on the text of the Finnish Presidency Progress report (14616/19)):

a. Addition in Annex I 1 (a) in AMF:

"Each Member State shall receive a fixed amount of EUR 7 500 000 from the Fund at the start of the programming period only**, with the exception of Cyprus, Malta and Greece who shall receive a fixed amount of EUR 25 000 000**;"[1]

b. Addition in the end of recital 34 (line 45) in AMF:

"(34) This Regulation should establish the initial amounts to Member States consisting of a fixed amount and an amount calculated on the basis of criteria laid down in Annex I, which reflect the needs and pressure experienced by different Member States in the areas of asylum, integration and return. **In view of the special needs of those Member States who have experienced the highest number of asylum applications per capita in 2018 and 2019, it is appropriate to increase the fixed amounts for Cyprus, Malta and Greece."**

For BMVI the following is proposed (based on the text of the Finnish Presidency Progress report (14621/19)):

a. Addition in Annex I 1 (a) in BMVI

"Each Member State shall receive a fixed amount of EUR 7 500 000 from the instrument at the start of the programming period only**, with the exception of Cyprus, Malta and Greece who shall receive a fixed amount of EUR 25 000 000**;"[2]

[1] **The amount will be adjusted for inflation using a fixed deflator of 2%.**

[2] **The amount will be adjusted for inflation using a fixed deflator of 2%.**

b. Addition in end of recital 38 (line 53) in BMVI:

" (38) This Regulation should establish the initial amounts for Member States' programmes calculated on the basis of criteria laid down in Annex I, which reflect the length and the threat levels at land and sea border sections, the workload at the airports and the consulates as well as the number of consulates. **In view of the special needs of those Member States who have experienced the highest number of asylum applications per capita in 2018 and 2019, it is appropriate to increase the fixed amounts for Cyprus, Malta and Greece**."

3. Transitional provision

The Presidency proposes the following addition which is based on Art. 111 of the CPR. Article 111 is not applicable for the AMF, BMVI and ISF. This proposal intends to give the member states the same flexibility as in the CPR. Only difference in substance is the lower amount of in (b) as the budget of AMF, BMVI and ISF is much lower as for example in the ERDF.

Accordingly, for AMF, BMVI and ISF the following is suggested:

a. AMF Article 34(3), BMVI Article 31(3), ISF Article 30(4)

"Where Member States continue [after the date of application of CPR] to support a project selected and started under Regulation (EC) No 516/2014[3], in accordance with Regulation 514/2014, they shall ensure that the following cumulative conditions are met:

(a) the project so selected has two phases identifiable from a financial point of view with separate audit trails;

(b) the total cost of the project exceeds 0.5 million Euro[4];

(c) payments for the first phase of the project shall be included in payment requests under Regulation (EU) 514/2014. Expenditure for the second phase of the project shall be included in payment applications under Regulation (EU) [CPR];

(d) the second phase of the project complies with the applicable law and is eligible for support from the [Fund/instrument] under this Regulation and Regulation [CPR];

(e) the Member State commits to complete the project, render it operational and report it in the annual performance report submitted by 15 February 2024.

The provisions of this Regulation and Regulation [CPR] shall apply to the second phase of the project."

b. Accompanying recital (AMF 55a, BMVI 57a, ISF 46a)

"Regulation (EU) No 514/2014 or any act applicable to the 2014–2020 programming period should continue to apply to programmes and projects supported by the Fund under the 2014–2020 programming period. Since the implementation period of Regulation (EU) No

[3] BMVI: "Regulation (EU) 515/2014" and for ISF: "Regulation (EU) 513/2014".
[4] BMVI: 2.5 million Euro.

514/2014 extends over to the programming period covered by this Regulation and in order to ensure continuity of implementation of certain projects approved by that Regulation, phasing provisions should be established. Each individual phase of the phased project should be implemented in accordance with the rules of the programming period under which it receives funding.”