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WORKING PAPER

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WORKING DOCUMENT

From:	General Secretariat of the Council
To:	JHA Counsellors on Financial Instruments
N° prev. doc.:	WK 8384/2020
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) - Comments from the delegations

Delegations will find attached a compilation of replies received from Member States on the abovementioned subject.

ANNEX

WRITTEN COMMENTS SUBMITTED BY THE MEMBER STATES

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)

doc. WK 8384/20 (regarding the three MFF Home Affairs proposals - AMF, BMVI and ISF)

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<u>ESTONIA</u>

We only have one comment concerning the implementation of EUCO 10/20 No. 70 – Pre-financing.

Estonia welcomes higher pre-financing rates for the HOME funds. Therefore we agree with the relevant update of Art 84(3) of the CPR as proposed by the Presidency. Regarding the additions to AMF (art 11a), BMVI (Art 10a) and ISF (Art 10a) proposals, Estonia has supported the approach to **keep the pre-financing at the same level as in the current period (5%)**. At the same time, if the majority of the MSs can support the proposed percentages, then we will not draw a red line and can show flexibility.

FINLAND

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

- FI would like to express its flexibility on the Presidency proposal on the implementation of EUCO 10/20 No. 70 concerning pre-financing. The proposed instalments are appropriate and enable a timely start of the implementation measures.

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

- The proposed amendments are coherent and purposeful when taking into account the EUCO conclusions. FI supports the Presidency proposal.

3. Transitional provision

- FI can be flexible with the proposed amendments.

FRANCE

I. Mise en œuvre du Point 70 des conclusions du Conseil européen du 21 juillet 2020 – Préfinancements

a. Proposition relative aux taux de préfinancements annuels (FAMI Article 11a nouveau, IGFV et FSI Articles 10a nouveaux « Pre-financing »)

- Les autorités françaises saluent la proposition de la Présidence visant à augmenter les taux par rapport aux fonds de cohésion. Néanmoins, les taux proposés sont insuffisants au regard des besoins de préfinancements nécessaires pour garantir le bon fonctionnement financier sur la prochaine période budgétaire.

- Il est donc proposé de fixer un taux annuel unique de 5% pour chaque année de 2021 à 2029, soit :

  (a) 2021 : 5%
  (b) 2022 : 5%
  (c) 2023 : 5%
  (d) 2024 : 5%
  (e) 2025 : 5%
  (f) 2026 : 5%
  (g) 2027 : 5%
  (h) 2028 : 5%
  (i) 2029 : 5 %

- La France souhaite également avoir des éclaircissements quant au report des premiers préfinancements en cas d'adoption tardive des règlements. La formulation retenue signifie-t-elle que le versement des préfinancements pour 2021 et 2022 interviendrait en même temps, au 1er juillet 2022, ou que les préfinancements de 2021 doivent être versés avant le 31 décembre de l'année d'adoption ?

b. Proposition relative au taux d'avance pour l'aide d'urgence (FAMI Article 26(3), IGFV Article 23(3), FSI Article 22(3) Additionnels « Pre-financing of emergency assistance »)

- Les autorités françaises soutiennent le taux d'avance proposé. Il est néanmoins souhaité que l'application de ce taux ne soit pas soumise à d'autres aléas que la seule condition de disponibilité des crédits. La rédaction alternative suivante est ainsi proposée :
*« (...). Pre-financing for emergency assistance ~~may~~ **shall** amount to 95% of the Union contribution, subject to the availability of funds. »*

c. Proposition d'ajout d'un considérant relatif au principe de préfinancement et de l'objectif général qu'il poursuit (FAMI 48a, IGFV 50a, FSI 38a)

- Nous soutenons la proposition de considérant.

II. Mise en œuvre du Point 106 des conclusions du Conseil européen du 21 juillet 2020 – Amendements des annexes I des règlements FAM et IGFV - Parts fixes de la Grèce, Chypre et Malte pour le FAMI et l'IGFV

- La France soutient les modifications proposées, prises conformément aux conclusions du Conseil européen.

III. Disposition transitoire pour les fonds JAI - FAMI Article 34(3), IGFV Article 31(3), FSI Article 30(4) et considérant complémentaire (FAMI 55a, IGFV 57a, FSI 46a)

- **Réserve d'examen** : La France salue l'esprit de flexibilité qui anime la proposition de la Présidence. Néanmoins, de nombreuses questions demeurent quant à l'intérêt de cette disposition, sa mise en œuvre opérationnelle, sa sécurité juridique et comptable, ainsi que sa compatibilité avec la piste d'audit.

Aussi, afin que nous puissions nous prononcer sur cette proposition, nous souhaiterions obtenir :

- **confirmation du caractère facultatif** de la mise en œuvre de cette disposition ;

- **des précisions sur ses objectifs et finalités**. En effet, il est d'ores et déjà possible, compte tenu des phases distinctes, de financer plusieurs projets qui auraient des liens entre eux, voire relèveraient d'une opération globale plus large, qui correspondraient à différentes phases de cette opération plus large, d'abord sur le cadre 14-20, puis sur le cadre 21-27 (ex. : financement d'une étude au titre d'un projet n° 1 programmé sur le cadre 2014-2020 ; puis si nécessaire, programmation de la mise en œuvre au titre d'un projet n° 2 programmé quant à lui sur le cadre 2021-2027 sous réserve de son éligibilité au futur programme national). Cette possibilité a l'avantage de respecter les règles de concurrence, de programmation, de contrôle et d'audit de chaque cadre en vertu des règlements propres applicables à chaque cadre. Dès lors, il serait nécessaire d'obtenir des précisions quant aux opportunités supplémentaires ou avantages que présenterait cette nouvelle disposition.

- **des illustrations pratiques et des précisions sur la mise en œuvre opérationnelle** de cette disposition au regard :
  - de la validation d'un tel projet lors d'un comité de programmation qui n'est pas compétent pour un programme non encore adopté ;
  - de la garantie de l'égalité d'accès aux financements européens et de transparence pour le cadre 2021-2027 ;
  - de la sécurité juridique quant à l'application rétroactive d'une disposition non prévue dans les règlements applicables au cadre 2014-2020, d'une part, et, d'autre part, d'un règlement non encore adopté sur des projets d'ores et déjà lancés ;
  - de la tenue comptable des différentes phases entre les deux cadres (alors même qu'elles relèveront nécessairement de deux programmes nationaux différents, de deux systèmes d'information SFC différents, d'indicateurs différents, etc.),
  - de la sécurité au regard de la piste d'audit, etc.

La proposition pourrait de prime abord contrevenir ou emporter des risques pour le respect de ces différents principes et règles de gestion.

Dans l'attente de ces précisions et compléments, les autorités françaises signalent d'ores et déjà une possible erreur de référence dans la rédaction. Il s'agirait plutôt du règlement 514/2014 et non du règlement 524/2014. De plus, sous réserve des éléments sollicités plus haut, et dans l'hypothèse où nous serions finalement amenés à soutenir cette proposition, nous ne serions pas favorables à un montant minimum global de 2,5 M€ pour l'IGFV. Un alignement sur le FAMI et le FSI, pour un montant de 0,5 M€, semblerait plus cohérent.

Enfin, compte tenu des risques et aléas susmentionnés, si ce dispositif devait prospérer, la France serait favorable à ce que son entrée en vigueur soit effective pour la prochaine période de transition, entre le CFP 2021-2027 et le CFP 2028-2034.

GREECE

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

A. AMF new Article 11a, BMVI and ISF new article 10a Pre-financing.
According to CPR articles 84 (pre-financing) and 99 (Decommitment Principles and Rules), there is a need that the pre-financing for AMIF, ISF and BMVI stay as low as possible. Based on the "lesson learned" from the current programming period, the risk of decommitment for at least the financial years 2021 and 2022 (there is an overlapping eligibility period for these years based on the principle N+2, with the current financial period 2014-2020) is possible for all M-S. This is the reason that Commission initially proposed specific decommitment rules for the years 2021 and 2022 (99 par.2). Thus, we propose not to set specific rules on pre-financing for HOME Funds and not to change the initial provisions as set at the Proposal Regulation .
As a compromise proposal, we only accept the increased percentages for the years 2023 – 2026.

B. AMF Article 26(3), BMVI Article 23 (3), ISF Article 22(3) Addition Pre-financing of emergency assistance
As the projects funded by the emergency assistance are mature, well-designed and ready to be implemented or are being implemented, the high percentage of 95% of the Union Contribution is acceptable for us. Thus we agree with the amendment and the respective accompanying recital.

2. Implementation of EUCO 10/20 No.106 – amendment of Annex I of AMF and BMVI.
We agree with the exceptional provisions (increase the fixed amount) for Greece, Malta and Cyprus. This is the adoption of results of EUCO to thematic regulations (AMF and BMVI).

3. Transitional Provision
We agree with the provision of the Presidency proposal for the addition of the paragraphs for AMF, BMVI and ISF with the exception of the amount in point (b), for which we propose for BMVI to remain the same as for AMF and ISF, i.e. 0,5 mil. € and not 2,5 mil. €.

HUNGARY

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

Hungary supports the modification of Article 84 of the Common Provisions Regulation which allows a higher pre-financing rate.

Addition Pre-financing of emergency assistance – The modification of AMF Article 26(3), BMVI Article 23(3), ISF Article 22(3), which proposes 95% of pre-financing is also welcomed.

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

Hungary agrees that Cyprus, Malta and Greece which were most exposed to migratory pressures in 2018 and 2019 have an increased fixed EUR 25 million amount from both funds.

3. Transitional provision

Hungary welcomes the proposal and would like to make further proposals.

If we divide the project implementation into two phases because of the lack of time of implementation, the second phase starts on 1 January 2023 and if we have to report the completion of the second phase on 15 February 2024, which we have to account by 30 June 2023, we do not see the benefit of transitional phases.

The proposal states that the two phases must be identifiable, but if the proposal does not allow sufficient time for the implementation of the second phase due to the tight reporting deadline, the results of the project or even the whole project may be jeopardized. Thus the significant administrative burden of the beneficiary and of the Responsible Authority becomes purposeless.

The real relief for the Member States would be the deletion of deadline just as the Art. 111 of CPR does not contain such a deadline or the prolongation of the submission of report on completion by 15 February 2025. We therefore request the Presidency to revise its proposal in line with this suggestion.

PORTUGAL

Horizontal provisions	Articles	Presidency proposal Wording suggestions	PT comments
Implementation of EUCO 10/20 No. 70 – Pre-financing Article 84 (3) of the CPR	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: 3%*** ***(b) 2022: 5%*** ***(c) 2023: 3%*** ***(d) 2024: 3%*** ***(e) 2025: 2%*** ***(f) 2026: 2%*** ***Where a programme is adopted after 1 July 2021, the earlier instalments shall be paid in the year of adoption.***	PT underlines a positive evolution compared to the initial proposal of 0,5%. In fact, this pre-financing rate wouldn't allow supporting beneficiaries, since the beginning of the implementation of the National Programs, given the expected amount associated with each 2021-2027 Program. Despite this positive evolution, PT cannot support this wording suggestion. The pre-financing rates are quite low and the experience of the current MFF has shown that a 5% pre-financing rate does not ensure that a Member State has the means to provide support to beneficiaries from the start of the implementation of each Program. Thus, PT proposes a pre-financing rate of 10% for each year.
Pre-financing of emergency assistance	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*	PT does not oppose this wording suggestion.

Horizontal provisions	Articles	Presidency proposal Wording suggestions	PT comments
		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.***	PT does not oppose this wording suggestion.
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	*For AMF the following is proposed:* *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***	PT does not oppose this wording suggestion.

Horizontal provisions	Articles	Presidency proposal Wording suggestions	PT comments
	to EUR 25 million in the Asylum and Migration Fund and to EUR 25 million in the Integrated Border Management Fund.”	***fixed amount of EUR 25 000 000****;"* *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: *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****;"* *b. Addition in end of recital 38 (line 53)*	PT does not oppose this wording suggestion.

Horizontal provisions	**Articles**	**Presidency proposal** **Wording suggestions**	**PT comments**
		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****."*	
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. AMF Article 34(3), BMVI Article	***Where Member States continue [after the date of application of CPR] to support a project selected and started under Regulation (EC) No 516/20141, in accordance with Regulation 524/2014, 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***	<u>PT does not oppose this wording suggestion.</u>

Horizontal provisions	Articles	Presidency proposal Wording suggestions	PT comments
	31(3), ISF Article 30(4)	***0.5 million Euro2;*** ***(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.***	
	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***	<u>PT does not oppose this wording suggestion.</u>

Horizontal provisions	Articles	Presidency proposal Wording suggestions	PT comments
		(EU) No 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.	

SLOVAKIA

Point 1.) We welcome the increase in pre-financing, although the percentage of payments for each year is still low in our view. There is a real burden on the state budget with pre-financing funds. In the case of public procurement for national projects, the funds will have to be available at least at the Managing Authority at the very beginning of the public procurement process itself. Otherwise, it will not be possible to start implementing projects (mainly national projects).

Point 2.) We do not apply comments.

Point 3.) We welcome more flexibility in the implementation of projects for home affairs funds.