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General Secretariat

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2018/0248(COD)**

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WK 9037/2018 INIT

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WORKING PAPER

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INFORMATION

From:	Presidency
To:	Ad Hoc Working Party on JHA Financial instruments
Subject:	Multiannual Financial Framework (MFF) 2021-2027 - Proposal for a Regulation of the European Parliament and of the Council establishing the Asylum and Migration Fund

In the context of the discussions on the MFF 2021-2027, delegations will find in annex the bracketed proposal in subject.

- Bracketed provisions/elements are those most likely to form part of horizontal negotiations on the MFF and will feature in the future MFF Negotiating Box (NB).
- This does not prevent the Ad hoc Working Party on JHA Financial instruments from clarification discussions on the bracketed provisions. Delegations may refer to such provisions during meetings, but the Presidency will not conclude discussions on those provisions at the level of the Ad hoc Working Party on JHA Financial instruments.
- All Presidency compromises prepared at sectoral level, including partial general approaches, will maintain the brackets as long as horizontal negotiations on the MFF are not finalised.
- Bracketed provisions may be reviewed if necessary as negotiations progress.

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- Recitals in general are not bracketed, with few exceptions, and will need to be adjusted in light of the agreement found on the articles.





Strasbourg, 12.6.2018
COM(2018) 471 final

2018/0248 (COD)

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

establishing the Asylum and Migration Fund

{SWD(2018) 347} - {SWD(2018) 348} - {SEC(2018) 315}

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
establishing the Asylum and Migration Fund

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,
Having regard to the Treaty on the Functioning of the European Union, and in particular Article 78(2) and Article 79(2) and (4) thereof,
Having regard to the proposal from the European Commission,
After transmission of the draft legislative act to the national parliaments,
Having regard to the opinion of the European Economic and Social Committee¹,
Having regard to the opinion of the Committee of the Regions²,
Acting in accordance with the ordinary legislative procedure,
Whereas:

- (1) In the context of the evolving migratory challenges characterised by the need to support strong reception, asylum, integration and migration systems of Member States, prevent and adequately handle situations of pressure and replace irregular and unsafe arrivals with legal and safe pathways, investing in efficient and coordinated migration management in the Union is key to realising the Union's objective of constituting an area of freedom, security and justice pursuant to Article 67(2) of the Treaty on the Functioning of the European Union.
- (2) The importance of a coordinated approach by the Union and the Member States is reflected in the European Agenda on Migration of May 2015, which stressed the need for a consistent and clear common policy to restore confidence in the Union's ability to bring together European and national efforts to address migration and work together in an effective way, in accordance with the principles of solidarity and fair sharing of responsibility, and was confirmed in its mid-term review of September 2017 and the progress report of March and May 2018.
- (3) In its conclusions of 19 October 2017, the European Council reaffirmed the need to pursue a comprehensive, pragmatic and resolute approach to migration management that aims to restore control of external borders and reduce irregular arrivals and the number of deaths at sea, and should be based on a flexible and coordinated use of all available Union and Member State instruments. The European Council further called to ensure significantly enhanced returns through actions at both EU and Member States level, such as effective readmission agreements and arrangements.

¹ OJ C , , p. .

² OJ C , , p. .

- (4) In order to support efforts to ensure a comprehensive approach to management of migration grounded on mutual trust, solidarity and responsibility sharing among Member States and Union institutions, with the objective of ensuring a common sustainable Union policy on asylum and immigration, Member States should be supported by adequate financial resources in the form of the Asylum and Migration Fund (hereinafter referred to as ‘the Fund’).
- (5) The Fund should be implemented in full compliance with the rights and principles enshrined in the Charter of Fundamental Rights of the European Union and with the Union’s international obligations as regards fundamental rights.
- (6) The Fund should build on the results and investments achieved with the support of its predecessors: the European Refugee Fund established by the Decision 573/2007/EC of the European Parliament and the Council, the European Fund for the Integration of third-country nationals established by the Council Decision 2007/435/EC, the European Return Fund established by the Decision 575/2007/EC of the European Parliament and the Council for the period 2007-2013 and the Asylum, Migration and Integration Fund for the period 2014-2020, as established by Regulation (EU) 516/2014 of the European Parliament and of the Council. It should at the same time take into account all relevant new developments.
- (7) The Fund should support the efficient management of migration flows, *inter alia* by promoting common measures in the area of asylum, including Member States’ efforts in receiving persons in need of international protection through resettlement and the transfer of applicants for or beneficiaries of international protection between Member States, supporting integration strategies and a more effective legal migration policy, so as to ensure the Union’s long-term competitiveness and the future of its social model and reduce incentives for irregular migration through a sustainable return and readmission policy. The Fund should support the strengthening of cooperation with third countries to reinforce management of flows of persons applying for asylum or other forms of international protection, avenues on legal migration and to counter irregular migration and ensure sustainability of return and effective readmission to third countries.
- (8) The migration crisis highlighted the need to reform the Common European Asylum System to ensure that efficient asylum procedures to prevent secondary movements, to provide uniform and appropriate reception conditions for applicants for international protection, uniform standards for the granting of international protection and appropriate rights and benefits for beneficiaries of international protection. At the same time, the reform was needed to put in place a fairer and more effective system of determining Member States’ responsibility for applicants for international protection as well as a Union framework for Member States’ resettlement efforts. Therefore, it is appropriate for the Fund to provide increased support to Member States’ efforts to fully and properly implement the reformed Common European Asylum System.
- (9) The Fund should also complement and reinforce the activities undertaken by the European Union Agency for Asylum (EUAA) established by Regulation (EU) .../... [EUAA Regulation]³ with a view to facilitating and improving the functioning of the common European asylum system, by coordinating and strengthening practical cooperation and information exchange between Member States, promoting Union law

³ Regulation (EU) No .../... of the European Parliament and of the Council of [EUAA Regulation] (OJ L ..., [date], p. ...).

and operational standards on asylum in order to ensure a high degree of uniformity based on high protection standards as regards procedures for international protection, reception conditions and the assessment of protection needs across the Union, enabling a sustainable and fair distribution of applications for international protection, facilitate convergence in the assessment of applications for international protection across the Union, support the resettlement efforts of the Member States and provide operational and technical assistance to Member States for the management of their asylum and reception systems, in particular those whose systems are subject to disproportionate pressure.

- (10) The Fund should support the efforts by the Union and the Member States relating to the enhancement of the Member States' capacity to develop, monitor and evaluate their asylum policies in the light of their obligations under existing Union law.
- (11) Partnerships and cooperation with third countries are an essential component of Union asylum policy to ensure the adequate management of flows of persons applying for asylum or other forms of international protection. With the aim of replacing the unsafe and irregular arrivals with legal and safe arrival to the territory of the Member States of third-country nationals or stateless persons in need of international protection, expressing solidarity with countries in regions to which or within which a large number of persons in need of international protection have been displaced by helping to alleviate the pressure on those countries, helping achieve the Union's migration policy objectives by increasing the Union's leverage *vis-à-vis* third countries, and of effectively contributing to global resettlement initiatives by speaking with one voice in international fora and with third countries, the Fund should provide financial incentives to the implementation of the Union Resettlement [and Humanitarian Admission] Framework.
- (12) Considering the high levels of migration flows to the Union in the last years and the importance of ensuring the cohesion of our societies, it is crucial to support Member States' policies for early integration of legally staying third-country nationals, including in the priority areas identified in the Action Plan on Integration of third-country nationals adopted by the Commission in 2016.
- (13) In order to increase efficiency, achieve the greatest Union added value and to ensure the consistency of the Union's response to foster the integration of third-country nationals, actions financed under the Fund should be specific and complementary to actions financed under the European Social Fund Plus (ESF+) and the European Regional Development Fund (ERDF). Measures financed under this Fund should support measures tailor-made to the needs of third-country nationals that are generally implemented in the early stage of integration, and horizontal actions supporting Member States' capacities in the field of integration, whereas interventions for third-country nationals with a longer-term impact should be financed under the ERDF and ESF+.
- (14) In this context, the authorities of the Member States responsible for the implementation of the Fund should be required to cooperate and establish coordination mechanisms with the authorities identified by Member States for the purpose of the management of the interventions of the ESF+ and of the ERDF and wherever necessary with their managing authorities and with the managing authorities of other Union funds contributing to the integration of third-country nationals.

- (15) The implementation of the Fund in this area should be consistent with the Union's common basic principles on integration, as specified in the common programme for integration.
- (16) It is appropriate to allow those Member States that so wish to provide in their programmes that integration actions may include immediate relatives of third-country nationals, to the extent that this is necessary for the effective implementation of such actions. The term 'immediate relative' should be understood as meaning spouses, partners and any person having direct family links in descending or ascending line with the third-country national targeted by the integration action, and who would otherwise not be covered by the scope of the Fund.
- (17) Considering the crucial role played by local and regional authorities and civil society organisations in the field of integration and to facilitate the access of these entities to funding at Union level, the Fund should facilitate the implementation of actions in the field of integration by local and regional authorities or civil society organisations, including through the use of the thematic facility and through a higher co-financing rate for these actions.
- (18) Considering the long-term economic and demographic challenges faced by the Union, it is crucial to establish well-functioning legal migration channels to the Union to maintain the Union as an attractive destination for migrants and ensure the sustainability of welfare systems and growth of the Union economy.
- (19) The Fund should support Member States in setting up strategies organising legal migration, enhancing their capacity to develop, implement, monitor and evaluate in general all immigration and integration strategies, policies and measures for legally staying third-country nationals, including Union legal instruments. The Fund should also support the exchange of information, best practices and cooperation between different departments of administration and levels of governance, and between Member States.
- (20) An efficient return policy is an integral part of the comprehensive migration approach the Union and its Member States pursue. The Fund should support and encourage efforts by the Member States with a view to the effective implementation and further development of common standards on return, in particular as set out in Directive 2008/115/EC of the European Parliament and of the Council⁴, and of an integrated and coordinated approach to return management. For sustainable return policies, the Fund should equally support related measures in third countries, such as the reintegration of returnees.
- (21) Member States should give preference to voluntary return. In order to promote voluntary return, Member States should envisage incentives such as preferential treatment in the form of enhanced return assistance should be envisaged for the voluntary return of persons. This kind of voluntary return is in the interests of both returnees and the authorities in terms of its cost-effectiveness.
- (22) Voluntary and enforced returns are nevertheless interlinked, with mutually reinforcing effect, and Member States should therefore be encouraged to reinforce the complementarities between these two forms of return. The possibility of removals is

⁴ Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals (OJ L 348, 24.12.2008, p. 98).

an important element contributing to the integrity of the asylum and legal migration systems. The Fund should therefore support actions of Member States to facilitate and carry out removals in accordance with the standards laid down in Union law, where applicable, and with full respect for the fundamental rights and dignity of returnees.

- (23) Specific support measures for returnees in the Member States and in the countries of return can improve conditions of return and enhance their reintegration.
- (24) Readmission agreements and other arrangements are an integral component of the Union return policy and a central tool for the efficient management of migration flows, as they facilitate the swift return of irregular migrants. Those agreements and arrangements are an important element in the framework of the dialogue and cooperation with third countries of origin and transit of irregular migrants and their implementation in third countries should be supported in the interests of effective return policies at national and Union level.
- (25) In addition to supporting the return of persons as provided for in this Regulation, the Fund should also support other measures to counter irregular migration, address incentives for illegal migration or the circumventing of existing legal migration rules, thereby safeguarding the integrity of Member States' immigration systems.
- (26) The employment of irregular migrants creates a pull factor for illegal migration and undermines the development of a labour mobility policy built on legal migration schemes. The Fund should therefore support Member States, either directly or indirectly, in their implementation of Directive 2009/52/EC of the European Parliament and of the Council⁵ which prohibits the employment of illegally staying third-country nationals and provides for sanctions against employers who infringe that prohibition.
- (27) The Fund should support Member States, either directly or indirectly, in their implementation of Directive 2011/36/EU of the European Parliament and of the Council⁶ which sets forth provisions on assistance, support and protection of victims of trafficking in human beings.
- (28) The Fund should complement and reinforce the activities undertaken in the field of return by the European Border and Coast Guard Agency established by Regulation (EU) 2016/1624 of the European Parliament and of the Council⁷, therefore contributing to effective European Integrated Border Management, as defined in Article 4 of that Regulation.
- (29) Synergies, consistency and efficiency should be sought with other Union funds and overlap between actions should be avoided.

⁵ Directive 2009/52/EC of the European Parliament and of the Council of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals (OJ L 168, 30.6.2009, p. 24).

⁶ Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA (OJ L 101, 15.4.2011, p. 1).

⁷ Regulation (EU) 2016/1624 of the European Parliament and of the Council of 14 September 2016 on the European Border and Coast Guard amending Regulation (EU) 2016/399 of the European Parliament and of the Council and repealing Regulation (EC) No 863/2007 of the European Parliament and of the Council, Council Regulation (EC) No 2007/2004 and Council Decision 2005/267/EC (OJ L 251, 16.9.2016, p. 1).

- (30) Measures in and in relation to third countries supported through the Fund should complement other actions outside the Union supported through the Union's external financing instruments. In particular, in implementing such actions, full coherence should be sought with the principles and general objectives of the Union's external action and foreign policy in respect of the country or region in question and the Union international commitments. In relation to the external dimension, the Fund should target support to enhance cooperation with third countries and to reinforce key aspects of migration management in areas of interest to the Union's migration policy.
- (31) Funding from the Union budget should concentrate on activities where Union intervention can bring added value compared to action undertaken by Member States alone. Financial support provided under this Regulation should contribute, in particular, to strengthening national and Union capabilities in the areas of asylum and migration.
- (32) A Member State may be deemed not to be compliant with the relevant Union *acquis*, including as regards the use of operating support under this Fund, if it has failed to fulfil its obligations under the Treaties in the area of asylum and return, if there is a clear risk of a serious breach by the Member State of the Union's values when implementing the *acquis* on asylum and return or if an evaluation report under the Schengen or the European Union Agency for Asylum evaluation and monitoring mechanism has identified deficiencies in the relevant area.
- (33) The Fund should reflect the need for increased flexibility and simplification while respecting requirements in terms of predictability, and ensuring a fair and transparent distribution of resources to meet the policy and specific objectives laid down in this Regulation.
- (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.
- (35) These initial amounts should form a basis for Member States' long-term investments. To take account of changes in migration flows and to address needs in the management of asylum and reception systems and integration of legally staying third-country nationals, and counter irregular migration through efficient and sustainable return policy, an additional amount should be allocated to the Member States at mid-term taking into account the absorption rates. This amount should be based on the latest available statistical data as set out in Annex I to reflect the changes in the baseline situation of Member States.
- (36) To contribute to the achievement of the policy objective of the Fund, Member States should ensure that their programmes include actions addressing the specific objectives of this Regulation, that the priorities chosen are in line with the implementation measures as set out in Annex II and that the allocation of resources between the objectives ensures that the overall policy objective can be met.
- (37) As challenges in the area of migration are constantly evolving, there is a need to adapt the allocation of funding to the changes in migration flows. To respond to pressing needs and changes in policy and Union priorities, and to steer funding towards actions with a high level of Union added value, part of the funding will be periodically allocated to specific actions, Union actions, emergency assistance, resettlement and to

provide additional support for Member States contributing to solidarity and responsibility efforts via a thematic facility.

- (38) Member States should be encouraged to use part of their programme allocation to fund the actions listed in Annex IV by benefiting from a higher Union contribution.
- (39) Part of the available resources under the Fund could also be allocated to Member States' programmes for the implementation of specific actions in addition to the initial allocation. These specific actions should be identified at Union level and should concern actions which require cooperative effort or actions necessary to address developments in the Union which require additional funding to be made available to one or more Member States.
- (40) The Fund should contribute to supporting operating costs related to asylum and return and enable Member States to maintain capabilities which are crucial for that service for the Union as a whole. Such support consists of full reimbursement of specific costs related to the objectives under the Fund and should form an integral part of the Member States' programmes.
- (41) To complement the implementation of the policy objective of this Fund 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.
- (42) In order to strengthen the Union's capacity to immediately address unforeseen or disproportionate heavy migratory pressure in one or more Member States characterised by a large or disproportionate inflow of third-country nationals, which places significant and urgent demands on their reception and detention facilities, asylum and migration management systems and procedures, heavy migratory pressures in third countries due to political developments or conflicts, it should be possible to provide emergency assistance in accordance with the framework set out in this Regulation.
- (43) This Regulation should ensure the continuation of the European Migration Network set up by Council Decision 2008/381/EC⁸ and should provide financial assistance in accordance with its objectives and tasks.
- (44) The policy objective of this Fund will be also addressed through financial instruments and budgetary guarantee under the policy windows of the InvestEU. Financial support should be used to address market failures or sub-optimal investment situations, in a proportionate manner and actions should not duplicate or crowd out private financing or distort competition in the Internal market. Actions should have a clear European added value.
- (45) This Regulation lays down a financial envelope for the entire Asylum and Migration Fund which is to constitute the prime reference amount, within the meaning of [reference to be updated as appropriate according to the new inter-institutional agreement: point 17 of the Interinstitutional Agreement of 2 December 2013 between the European Parliament, the Council and the Commission on budgetary discipline, on

⁸ 2008/381/EC: Council Decision of 14 May 2008 establishing a European Migration Network (OJ L 131, 21.5.2008, p. 7).

cooperation in budgetary matters and on sound financial management⁹], for the European Parliament and the Council during the annual budgetary procedure.

- (46) Regulation (EU) No .../... [Financial Regulation] applies to this Fund. It lays down rules on the implementation of the Union budget, including the rules on grants, prizes, procurement, indirect implementation, financial assistance, financial instruments and budgetary guarantees.
- (47) For the purpose of implementation of actions under shared management, the Fund should form part of a coherent framework consisting of this Regulation, Financial Regulation and Regulation (EU) .../2021 [Common Provisions Regulation].
- (48) Regulation (EU) .../2021 [Common Provisions Regulation] establishes the framework for action for ERDF, ESF+, the Cohesion Fund, the European Maritime and Fisheries Fund (EMFF), the Asylum and Migration Fund (AMF), the Internal Security Fund (ISF) and the Border Management and Visa Instrument (BMVI) as a part of the Integrated Border Management Fund (IBMF), and lays down, in particular, the rules concerning programming, monitoring and evaluation, management and control for Union funds implemented under shared management. It is therefore necessary to specify the objectives of AMF, and to lay down specific provisions concerning the type of activities that may be financed by AMF.
- (49) The types of financing and the methods of implementation under this Regulation should be chosen on the basis of their ability to achieve the specific objectives of the actions and to deliver results, taking into account, in particular, the costs of controls, the administrative burden, and the expected risk of non-compliance. This should include consideration of the use of lump sums, flat rates and unit costs, as well as financing not linked to costs as referred to in Article 125(1) of the Financial Regulation.
- (50) In accordance with the Financial Regulation¹⁰, Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council¹¹, Council Regulation (Euratom, EC) No 2988/95¹², Council Regulation (Euratom, EC) No 2185/96¹³ and Council Regulation (EU) 2017/1939¹⁴, the financial interests of the Union are to be protected through proportionate measures, including the prevention, detection, correction and investigation of irregularities and fraud, the recovery of funds lost, wrongly paid or incorrectly used and, where appropriate, the imposition of administrative sanctions. In particular, in accordance with Regulation (EU, Euratom) No 883/2013 and Regulation (Euratom, EC) No 2185/96, the European Anti-Fraud Office (OLAF) may carry out administrative investigations, including on-the-spot checks and inspections, with a view to establishing whether there has been fraud, corruption or any other criminal offences affecting the financial interests of the Union. In accordance with Regulation (EU) 2017/1939, the European Public Prosecutor's

⁹ OJ C 373, 20.12.2013, p. 1;
http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.C_.2013.373.01.0001.01.ENG&toc=OJ:C:2013:373:TOC

¹⁰ OJ C , , p. .

¹¹ OJ C , , p. .

¹² Council Regulation (Euratom, EC) No 2988/95 of 18 December 1995 on the protection of the European Communities' financial interests (OJ L 312, 23.12.95, p. 1).

¹³ OJ C , , p. .

¹⁴ Council Regulation (EU) 2017/1371 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office ('the EPPO') (OJ L 283, 31.10.2017, p. 1).

Office may investigate and prosecute fraud and other illegal activities affecting the financial interests of the Union as provided for in Directive (EU) 2017/1371 of the European Parliament and of the Council¹⁵. In accordance with the Financial Regulation, any person or entity receiving Union funds is to cooperate fully in the protection of the Union's financial interests to grant the necessary rights and access to the Commission, OLAF and the European Court of Auditors and to ensure that any third parties involved in the implementation of Union funds grant equivalent rights.

- (51) Horizontal financial rules adopted by the European Parliament and the Council on the basis of Article 322 of the Treaty on the Functioning of the European Union apply to this Regulation. These rules are laid down in the Financial Regulation and determine in particular the procedure for establishing and implementing the budget through grants, procurement, prizes, indirect implementation, and provide for checks on the responsibility of financial actors. [Rules adopted on the basis of Article 322 of the TFEU also concern the protection of the Union's budget in case of generalised deficiencies as regards the rule of law in the Member States, as the respect for the rule of law is an essential precondition for sound financial management and effective EU funding.]
- (52) Pursuant to Article 94 of Council Decision 2013/755/EU¹⁶, persons and entities established in overseas countries and territories (OCTs) are eligible for funding subject to the rules and objectives of the Fund and possible arrangements applicable to the Member State to which the relevant overseas country or territory is linked.
- (53) Pursuant to Article 349 of the TFEU and in line with the Commission Communication 'A stronger and renewed strategic partnership with the EU's outermost regions'¹⁷, endorsed by the Council in its conclusion of 12 April 2018, relevant Member States should ensure that their national strategies and programmes address the specific challenges the outermost regions face in managing migration. The Fund supports these Member States with adequate resources to help these regions manage migration sustainably and handle possible situations of pressure.
- (54) Pursuant to paragraph 22 and 23 of the Inter-institutional agreement for Better Law-Making of 13 April 2016, there is a need to evaluate this Fund on the basis of information collected through specific monitoring requirements, while avoiding overregulation and administrative burden, in particular on Member States. These requirements, where appropriate, can include measurable indicators, as a basis for evaluating the effects of the Fund on the ground. In order to measure the achievements of the Fund, common indicators and related targets should be established in relation to each specific objective of the Fund. Through these common indicators and financial reporting, the Commission and the Member States should monitor the implementation of the Fund, in accordance with the relevant provisions of Regulation (EU) .../2021 of the European Parliament and of the Council [Common Provisions Regulation] and this Regulation.
- (55) Reflecting the importance of tackling climate change in line with the Union's commitments to implement the Paris Agreement and the United Nations Sustainable

¹⁵ Directive (EU) 2017/1371 of the European Parliament and of the Council of 5 July 2017 on the fight against fraud to the Union's financial interests by means of criminal law (OJ L 198, 28.7.2017, p. 29).

¹⁶ Council Decision 2013/755/EU of 25 November 2013 on the association of the overseas countries and territories with the European Union (Overseas Association Decision) (OJ L 344, 19.12.2013, p. 1).

¹⁷ COM(2017)623 final.

Development Goals, this Fund will contribute to mainstream climate actions and to the achievement of an overall target of [25 %] of the EU budget expenditures supporting climate objectives. Relevant actions will be identified during the Fund's preparation and implementation, and reassessed in the context of the relevant evaluations and review processes.

- (56) In order to supplement and amend certain non-essential elements of this Regulation, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission in respect of the list of actions eligible for higher co-financing as listed in Annex IV, operating support and in order to develop further the common monitoring and evaluation framework. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that these consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement on Better Law Making of 13 April 2016.
- (57) In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission. These powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council¹⁸. The examination procedure should be used for implementing acts that lay down common obligations on Member States, in particular on the provision of information to the Commission, and the advisory procedure should be used for the adoption of implementing acts relating to the arrangements for providing information to the Commission in the framework of programming and reporting, given their purely technical nature.
- (58) Since the objective of this Regulation, namely to contribute to an effective management of migration flows in the Union, in accordance with the common policy on asylum and international protection and the common immigration policy, cannot be sufficiently achieved by the Member States acting alone and can be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective.
- (59) In accordance with Article 3 of the Protocol on the position of [the United Kingdom] and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, and without prejudice to Article 4 of that Protocol, Ireland [is not taking part in the adoption of this Regulation and is not bound by it or subject to its application / has notified its wish to take part in the adoption and application of this Regulation].
- (60) In accordance with Articles 1 and 2 of the Protocol on the position of Denmark annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, Denmark is not taking part in the adoption of this Regulation and is not bound by it or subject to its application.

¹⁸ Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).

- (61) It is appropriate to align the period of application of this Regulation with that of Council Regulation (EU, Euratom) .../2021 [Multiannual Financial Framework Regulation],

HAVE ADOPTED THIS REGULATION:

CHAPTER I

GENERAL PROVISIONS

Article 1

Subject matter

1. This Regulation establishes the Asylum and Migration Fund ('the Fund').
2. This Regulation lays down the objectives of the Fund, the budget for the period from 2021 to 2027, the forms of Union funding and the rules for providing such funding.

Article 2

Definitions

For the purpose of this Regulation, the following definitions shall apply:

- (a) 'applicant for international protection' means an applicant as defined in point [x] of Article 2 of Regulation (EU) ... [Asylum Procedure Regulation]¹⁹;
- (b) 'beneficiary of international protection' within the meaning of point (2) of Article [2] of Regulation (EU) ... [Qualification Regulation]²⁰;
- (c) 'blending operation' means actions supported by the Union budget, including within blending facilities as defined in point (6) of Article 2 of the Financial Regulation, combining non-repayable forms of support or financial instruments from the Union budget with repayable forms of support from development or other public finance institutions, as well as from commercial finance institutions and investors;
- (d) 'family member' means any third-country national as defined under the Union law relevant to the policy area of action supported under the Fund;
- (e) 'humanitarian admission' within the meaning of Article [2] of Regulation (EU) ... [Union Resettlement [and Humanitarian Admission] Framework]²¹;
- (f) 'removal' means 'removal' as defined in point (5) of Article 3 of Directive 2008/115/EC;
- (g) 'resettlement' means 'resettlement' as defined in Article [2] of Regulation (EU) ... [Union Resettlement [and Humanitarian Admission] Framework];

¹⁹ OJ C , , p. .

²⁰ OJ C , , p. .

²¹ OJ C , , p. .

- (h) 'return' means 'return' as defined in point (3) of Article 3 of Directive 2008/115/EC;
- (i) 'third-country national' means any person who is not a citizen of the Union as defined in Article 20(1) of the TFEU. Reference to third-country nationals shall be understood to include stateless persons and persons with undetermined nationality;
- (j) 'vulnerable person' means any person as defined under the Union law relevant to the policy area of action supported under the Fund.

Article 3

Objectives of the Fund

1. The policy objective of the Fund shall be to contribute to an efficient management of migration flows in line with the relevant Union *acquis* and in compliance with the Union's commitments on fundamental rights.
2. Within the policy objective set out in paragraph 1, the Fund shall contribute to the following specific objectives:
 - (a) to strengthen and develop all aspects of the Common European Asylum System, including its external dimension;
 - (b) to support legal migration to the Member States including to contribute to the integration of third-country nationals;
 - (c) to contribute to countering irregular migration and ensuring effectiveness of return and readmission in third countries.
3. Within the specific objectives set out in paragraph 2, the Fund shall be implemented through the implementation measures listed in Annex II.

Article 4

Scope of support

1. Within the objectives referred to in Article 3, and in line with the implementation measures listed in Annex II, the Fund shall in particular support the actions listed in Annex III.
2. To achieve the objectives of this Regulation, the Fund may support the actions in line with the Union priorities as referred to in Annex III in relation to and in third countries, where appropriate, in accordance with Article 5 and 6.
3. The objectives of this Regulation shall support actions focusing on one or more target groups within the scope of Articles 78 and 79 of the Treaty on the Functioning of the European Union.

Article 5

Third countries associated to the Fund

The Fund shall be open to third countries in accordance with the conditions laid down in a specific agreement covering the participation of the third country to the Asylum and Migration Fund, provided that the agreement:

- ensures a fair balance as regards the contributions and benefits of the third country participating in the Fund;
- lays down the conditions of participation in the Fund, including the calculation of financial contributions to the Fund and their administrative costs. These contributions shall constitute assigned revenues in accordance with Article [21(5)] of the Financial Regulation;
- does not confer to the third country a decisional power on the Fund;
- guarantees the rights of the Union to ensure sound financial management and to protect its financial interests.

Article 6

Eligible entities

1. The following entities may be eligible:
 - (a) legal entities established in any of the following countries:
 - (1) a Member State or an overseas country or territory linked to it;
 - (2) third country associated to the Fund;
 - (3) third country listed in the work programme under the conditions specified therein;
 - (b) any legal entity created under Union law or any international organisation.
2. Natural persons are not eligible.
3. Legal entities established in a third country are exceptionally eligible to participate where this is necessary for the achievement of the objectives of a given action.
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.

CHAPTER II

FINANCIAL AND IMPLEMENTATION FRAMEWORK

SECTION 1

COMMON PROVISIONS

Article 7

General principles

1. Support provided under this Regulation shall complement national, regional and local intervention, and shall focus on adding value to the objectives of this Regulation.
2. The Commission and the Member States shall ensure that the support provided under this Regulation and by the Member States is consistent with the relevant activities, policies and priorities of the Union and is complementary to other Union instruments.
3. The Fund shall be implemented in shared, direct or indirect management in accordance with Articles [62(1) (a), (b) and (c)] of the Financial Regulation.

Article 8

Budget

1. The financial envelope for the implementation of the Fund for the 2021-2027 period shall be EUR [10 415 000 000] in [current prices].
2. The financial resources shall be used as follows:
 - (a) EUR [6 249 000 000] shall be allocated to the programmes implemented under shared management;
 - (b) EUR [4 166 000 000] shall be allocated to the thematic facility.
3. Up to 0.42 % of the financial envelope shall be allocated for technical assistance at the initiative of the Commission as referred to in Article 29 of the Regulation EU ../.. [Common Provisions Regulation].

Article 9

General provisions on the implementation of the thematic facility

1. The financial envelope referred to in Article 8(2)(b) shall be allocated flexibly through the thematic facility using shared, direct and indirect management as set out in work programmes. Funding from the thematic facility shall be used for its components:
 - a) specific actions;

- b) Union actions;
- c) emergency assistance;
- d) resettlement;
- e) support to Member States contributing to solidarity and responsibility efforts; and
- f) European Migration Network.

Technical assistance at the initiative of the Commission shall also be supported from the financial envelope for the thematic facility.

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.
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.
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 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.
5. The Commission shall establish the overall amount made available for the thematic facility under the annual appropriations of the Union budget. The Commission shall adopt financing decisions as referred to in Article [110] of the Financial Regulation for the thematic facility identifying objectives and actions to be supported and specifying the amounts for each of its components as referred to in paragraph 1. Financing decisions shall set out, where applicable, the overall amount reserved for blending operations.
6. The thematic facility shall in particular, support actions falling under the implementation measure 2(b) of Annex II that are implemented by the local and regional authorities or civil society organisations.
7. Following the adoption of a financing decision as referred to in paragraph 5, the Commission may amend the programmes implemented under shared management accordingly.
8. These financing decisions may be annual or multiannual and may cover one or more components of the thematic facility.

SECTION 2

SUPPORT AND IMPLEMENTATION UNDER SHARED MANAGEMENT

Article 10

Scope

1. This section applies to the part of the financial envelope referred to in Article 8(2)(a), and additional resources to be implemented under shared management according to the Commission decision for the thematic facility referred to in Article 9.
2. Support under this section shall be implemented under shared management in accordance with Article [63] of the Financial Regulation and the Regulation EU ../.. [Common Provisions Regulation].

Article 11

Budgetary resources

1. Resources referred to in Article 8(2)(a) shall be allocated to the national programmes (the 'programmes') implemented by Member States under shared management indicatively as follows:
 - (a) EUR [5 207 500 000] to the Member States in accordance with [Annex I];
 - (b) EUR [1 041 500 000] to the Member States for the adjustment of the allocations for the programmes as referred to in Article 14(1).
2. Where the amount referred to in paragraph 1(b) is not allocated, the remaining amount may be added to the amount referred to in Article 8(2)(b).

Article 12

Co-financing rates

1. The contribution from the Union budget shall not exceed 75 % of the total eligible expenditure of a project.
2. The contribution from the Union budget may be increased to 90 % of the total eligible expenditure for projects implemented under specific actions.
3. The contribution from the Union budget may be increased to 90 % of the total eligible expenditure for actions listed in Annex IV.
4. The contribution from the Union budget may be increased to 100 % of the total eligible expenditure for operating support.
5. The contribution from the Union budget may be increased to 100 % of the total eligible expenditure for emergency assistance.
6. The Commission decision approving a programme shall set the co-financing rate and the maximum amount of support from this Fund for the types of actions referred to in paragraphs 1 to 5.

7. For each specific objective, the Commission decision shall set out whether the co-financing rate for the specific objective is to be applied to:
 - (a) the total contribution, including the public and private contributions; or
 - (b) the public contribution only.

Article 13

Programmes

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 *acquis* 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.
2. The Commission shall ensure that the European Union Agency for Asylum and the European Border and Coast Guard Agency are associated to the process of developing the programmes at an early stage, as regards the areas of their competence. The Commission shall consult the European Border and Coast Guard Agency and the European Union Agency for Asylum on the draft programmes to ensure consistency and complementarity of the actions of the agencies and those of the Member States.
3. The Commission may associate the European Union Agency for Asylum and European Border and Coast Guard Agency in monitoring and evaluation tasks as referred to in Section 5 where appropriate in particular in view of ensuring that the actions implemented with the support of the Fund are compliant with the relevant Union *acquis* and agreed Union priorities.
4. Further to a monitoring exercise as carried out in accordance with Regulation (EU) [../..] [EUAA Regulation] or the adoption of recommendations in accordance with Regulation (EU) No 1053/2013 which are within the scope of this Regulation, the Member State concerned shall examine, together with the Commission, and where relevant with the European Union Agency for Asylum and the European Border and Coast Guard Agency, how to address the findings, including any shortcomings or issues of capacity and preparedness, and shall implement the recommendations through its programme.
5. Where necessary, the programme in question shall be amended to take into account the recommendations referred to in paragraph 4. Depending on the impact of the adjustment, the revised programme may be approved by the Commission.
6. In cooperation and consultation with the Commission and the relevant agencies in accordance with their competence, as applicable, resources under the programme may be reallocated with the aim of addressing recommendations, as referred to in paragraph 4 that have financial implications.
7. Member States shall in particular pursue the actions eligible for higher co-financing as listed in Annex IV. In the event of unforeseen or new circumstances or in order to ensure the effective implementation of funding, the Commission shall be empowered to adopt delegated acts in accordance with Article 32 to amend the list of actions eligible for higher co-financing as listed in Annex IV.

8. Whenever a Member State decides to implement projects with or in a third country with the support of the Fund, the Member State concerned shall consult the Commission prior to the start of the project.
9. 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.

Article 14

Mid-term review

1. In 2024, the Commission shall allocate to the programmes of Member States concerned the additional amount referred to in Article 11(1)(b) in accordance with the criteria referred to in paragraphs 1(b) to 5 of Annex I. Funding shall be effective for the period as of the calendar year 2025.
2. If at least 10 % of the initial allocation of a programme referred to in Article 11(1)(a) has not been covered by payment applications submitted in accordance with Article [85] of Regulation (EU) .../2021 [Common Provisions Regulation], the Member State concerned shall not be eligible to receive the additional allocation for the programme referred to in paragraph 1.
3. The allocation of the funds from the thematic facility as of 2025 shall, where appropriate, take into account the progress made in achieving milestones of the performance framework as referred to in Article [12] of Regulation (EU) .../2021 [Common Provisions Regulation] and identified implementation shortcomings.

Article 15

Specific actions

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.
2. Member States may in addition to their allocation calculated in accordance with Article 11(1), receive an additional amount, provided that it is earmarked as such in the programme and is used to contribute to the implementation of the objectives of this Regulation.
3. The 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.

Article 16

Resources for the Union Resettlement [and Humanitarian Admission] Framework

1. Member States shall receive, in addition to their allocation calculated in accordance with Article 11(1)(a), a contribution of [EUR 10 000] for each resettled person in accordance with the targeted Union resettlement scheme. That contribution shall take

the form of financing not linked to costs in accordance with Article [125] of the Financial Regulation.

2. The amount referred to in paragraph 1 shall be allocated to the Member States through the amendment of their programme provided that the person in respect of whom the contribution is allocated was effectively resettled in accordance with the Union Resettlement [and Humanitarian Admission] Framework.
3. The 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.
4. Member States shall keep the information necessary to allow the proper identification of the resettled persons and of the date of their resettlement.

Article 17

Resources to support the implementation of Regulation ../. [Dublin Regulation]

1. A Member State shall receive, in addition to their allocation calculated in accordance with Article 11(1)(a), a contribution of EUR [[10 000]] for each applicant for international protection for whom that Member State becomes responsible as from when that Member State is in challenging circumstances as defined in Regulation (EU) ../. [Dublin Regulation].
2. A Member State shall receive, in addition to their allocation calculated in accordance with Article 11(1)(a), a contribution of EUR [[10 000]] for each applicant for international protection allocated to that Member State who is above the benefitting Member State's fair share.
3. A Member State referred to in paragraphs 1 and 2 shall receive an additional contribution of EUR [[10 000]] per applicant who has been granted international protection for the implementation of integration measures.
4. A Member State referred to in paragraphs 1 and 2 shall receive an additional contribution of EUR [[10 000]] per person for whom the Member State can establish on the basis of the updating of the data set referred to in Article 11(d) of Regulation (EU) ../. [Eurodac Regulation] that the person has left the territory of the Member State, on either a compulsory or voluntarily basis in compliance with a return decision or a removal order.
5. A Member State shall receive, in addition to its allocation calculated in accordance with Article 11(1)(a), a contribution of EUR [[500]] for each applicant of international protection transferred from one Member State to another, for each applicant transferred pursuant to point (c) of the first paragraph of Article 34(i) of Regulation (EU) ../... [Dublin Regulation] and, where applicable, for each applicant transferred pursuant to point (g) of Article 34 (j) of Regulation (EU) ../. [Dublin Regulation].
6. The amounts referred to in this Article shall take the form of financing not linked to costs in accordance with Article [125] of the Financial Regulation.
7. The additional amounts referred to in paragraphs 1 to 5 shall be allocated to the Member States in their programmes provided that the person in respect of whom the contribution is allocated was, as applicable, effectively transferred to a Member

State, effectively returned or registered as an applicant in the Member State responsible in accordance with Regulation (EU) ... [Dublin Regulation].

8. 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.

Article 18

Operating support

1. Operating support is a part of a Member State's allocation which may be used as support to the public authorities responsible for accomplishing the tasks and services which constitute a public service for the Union;
2. A Member State may use up to 10 % of the amount allocated under the Fund to its programme to finance operating support under objectives in Article 3(2)(a) and (c).
3. The Member States using operating support shall comply with the Union *acquis* on asylum and return.
4. Member States shall justify in the programme and in the annual performance report as referred to in Article 30 the use of operating support to achieve the objectives of this Regulation. Before the approval of the programme, the Commission shall, with the European Union Agency for Asylum and the European Border and Coast Guard Agency in line with Article 13, assess the baseline situation in the Member States which have indicated their intention to use operating support. The Commission shall take into account the information provided by those Member States and, where relevant, the information available in the light of the monitoring exercises, as carried out in accordance with Regulation (EU) ... [EUAA Regulation] and Regulation (EU) No 1053/2013, which are within the scope of this Regulation.
5. Operating support shall be concentrated on specific tasks and services as laid down in Annex VII.
6. To address unforeseen or new circumstances or to ensure the effective implementation of funding, the Commission shall be empowered to adopt delegated acts in accordance with Article 32 to amend the list of specific tasks and services in Annex VII.

SECTION 3

SUPPORT AND IMPLEMENTATION UNDER DIRECT AND INDIRECT MANAGEMENT

Article 19

Scope

Support under this section Union shall be implemented either directly by the Commission in accordance with point (a) of Article 62(1) of the Financial Regulation, or indirectly in accordance with point (c) of that Article.

Article 20

Union actions

1. Union actions are transnational projects or projects of particular interest to the Union implemented in line with the objectives of this Regulation.
2. At the Commission's initiative, the Fund may be used to finance Union actions concerning the objectives of this Regulation as referred to in Article 3 and in accordance with Annex III.
3. Union actions may provide funding in any of the forms laid down in the Financial Regulation in particular grants, prizes and procurement. They may also provide financing in the form of financial instruments within blending operations.
4. Grants implemented under direct management shall be awarded and managed in accordance with [Title VIII] of the Financial Regulation.
5. The evaluation committee assessing the proposals may be composed of external experts.
6. Contributions to a mutual insurance mechanism may cover the risk associated with the recovery of funds due by recipients and shall be considered a sufficient guarantee under the Financial Regulation. The provisions laid down in [Article X of] Regulation (EU) ../. [successor of the Regulation on the Guarantee Fund] shall apply.

Article 21

European Migration Network

1. The Fund shall support the European Migration Network and provide the financial assistance necessary for its activities and its future development.
2. The amount made available for the European Migration Network under the annual appropriations of the Fund and the work programme laying down the priorities for its activities shall be adopted by the Commission, after approval by the Steering Board in accordance with Article 4(5)(a) of Decision 2008/381/EC (as amended). The decision of the Commission shall constitute a financing decision pursuant to Article [110] of the Financial Regulation. To ensure the timely availability of resources, the Commission may adopt the work programme for the European Migration Network in a separate financing decision.
3. Financial assistance provided for the activities of the European Migration Network shall take the form of grants to the national contact points referred to in Article 3 of Decision 2008/381/EC and procurements as appropriate, in accordance with the Financial Regulation.

Article 22

Blending operations

Blending operations decided under this Fund shall be implemented in accordance with the [InvestEu regulation] and Title X of the Financial Regulation.

Article 23

Technical assistance at the initiative of the Commission

The Fund 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%.

Article 24

Audits

Audits on the use of the Union contribution carried out by persons or entities, including by other than those mandated by the Union institutions or bodies, shall form the basis of the overall assurance pursuant to Article 127 of Regulation (EU) [Regulation on the financial rules applicable to the general budget of the Union].

Article 25

Information, communication and publicity

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.
2. The Commission shall implement information and communication actions relating to the Fund and its actions and results. Financial resources allocated to the Fund 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.

SECTION 4

SUPPORT AND IMPLEMENTATION UNDER SHARED, DIRECT AND INDIRECT MANAGEMENT

Article 26

Emergency assistance

1. The Fund shall provide financial assistance to address urgent and specific needs in the event of an emergency situation resulting from one or more of the following:

- (a) heavy migratory pressure in one or more Member States characterised by a large or disproportionate inflow of third-country nationals, which places significant and urgent demands on their reception and detention facilities, asylum and migration management systems and procedures;
 - (b) the implementation of temporary protection mechanisms within the meaning of Directive 2001/55/EC²²;
 - (c) heavy migratory pressure in third countries, including where persons in need of protection may be stranded due to political developments or conflicts, notably where it might have an impact on migration flows towards the EU.
2. Emergency assistance may take the form of grants awarded directly to the decentralised agencies.
 3. Emergency assistance may be allocated to Member States' programmes in addition to their allocation calculated in accordance with Article 11(1) and Annex I, provided that it is 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.
 4. Grants implemented under direct management shall be awarded and managed in accordance with [Title VIII] of the Financial Regulation.

Article 27

Cumulative, complementary and combined funding

1. An action that has received a contribution under the Fund may also receive a contribution from any other Union programme, including Funds under shared management, provided that the contributions do not cover the same costs. The rules of each contributing Union programme shall apply to its respective contribution to the action. The cumulative funding shall not exceed the total eligible costs of the action and the support from the different Union programmes may be calculated on a pro-rata basis in accordance with the documents setting out the conditions for support.
2. Actions awarded a seal of Excellence certification, or which comply with the following cumulative comparative conditions:
 - (a) they have been assessed in a call for proposals under the instrument;
 - (b) they comply with the minimum quality requirements of that call for proposals;
 - (c) they may not be financed under that call for proposals due to budgetary constraints.

may receive support from the European Regional Development Fund, the Cohesion Fund, the European Social Fund+ or the European Agricultural Fund for Rural Development, in accordance with paragraph 5 of Article [67] of Regulation (EU) ../.. [Common Provisions Regulation] and Article [8] or Regulation (EU) ../.. [Financing, management and monitoring of the Common Agricultural Policy], provided that such

²² Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof (OJ L 212, 7.8.2001, p. 12).

actions are consistent with the objectives of the programme concerned. The rules of the Fund providing support shall apply.

SECTION 5

MONITORING, REPORTING AND EVALUATION

SUB SECTION 1 COMMON PROVISIONS

Article 28

Monitoring and reporting

1. In compliance with its reporting requirements pursuant to Article [43(3)(h)(i)(iii)] of the Financial Regulation, the Commission shall present to the European Parliament and the Council information on performance in accordance with Annex V.
2. The Commission shall be empowered to adopt delegated acts in accordance with Article 32 to amend Annex V in order to make the necessary adjustments to the information on performance to be provided to the European Parliament and the Council.
3. The indicators to report on progress of the Fund towards the achievement of the objectives of this Regulation are set in Annex VIII. For output indicators, baselines shall be set at zero. The milestones set for 2024 and targets set for 2029 shall be cumulative.
4. The performance reporting system shall ensure that data for monitoring programme implementation and results are collected efficiently, effectively, and in a timely manner. To that end, proportionate reporting requirements shall be imposed on recipients of Union funds and where relevant Member States.
5. In order to ensure effective assessment of the progress of the Fund towards the achievement of its objectives, the Commission shall be empowered to adopt delegated acts in accordance with Article 32 to amend Annex VIII to review and complement the indicators where necessary and to supplement this Regulation with provisions on the establishment of a monitoring and evaluation framework, including for project information to be provided by the Member States.

Article 29

Evaluation

1. The Commission shall carry out a mid-term and a retrospective evaluation of this Regulation, including the actions implemented under the Fund.
2. The mid-term and the retrospective evaluation shall be carried out in a timely manner to feed into the decision-making process.

SUB SECTION 2 RULES FOR SHARED MANAGEMENT

Article 30

Annual performance reports

1. By 15 February 2023 and by the same date of each subsequent year up to and including 2031, Member States shall submit to the Commission the annual performance report as referred to in Article 36(6) of Regulation (EU) .../2021 [Common Provisions Regulation]. The report submitted in 2023 shall cover the implementation of the programme in the period to 30 June 2022.
2. The annual performance report shall in particular set out information on:
 - (a) progress in the implementation of the programme and in achieving the milestones and targets, taking into account the latest data as required by Article [37] of Regulation (EU) .../2021 [Common Provisions Regulation];
 - (b) any issues affecting the performance of the programme and the action taken to address them;
 - (c) the complementarity between the actions supported by the Fund and support provided by other Union funds, in particular those in or in relation to third countries;
 - (d) contribution of the programme to the implementation of the relevant Union *acquis* and action plans;
 - (e) the implementation of communication and visibility actions;
 - (f) the fulfilment of the applicable enabling conditions and their application throughout the programming period;
 - (g) the number of persons resettled with the help of the Fund in line with the amounts referred to in Article 16(1);
 - (h) the number of applicants for or beneficiaries of international protection transferred from one Member State to another in line with Article 17.
3. The Commission may make observations on the annual performance report within two months of the date of its receipt. Where the Commission does not provide observations by that deadline, the report shall be deemed to have been accepted.
4. In order to ensure uniform conditions for the implementation of this Article, the Commission shall adopt an implementing act establishing the template for the annual performance report. This implementing act shall be adopted in accordance with the advisory procedure referred to in Article 33(2).

Article 31

Monitoring and reporting

1. Monitoring and reporting in accordance with Title IV of Regulation (EU) .../... [Common Provisions Regulation] shall be based on the types of intervention set out

in Tables 1, 2 and 3 in Annex VI. To address unforeseen or new circumstances or to ensure the effective implementation of the funding, the Commission shall be empowered to adopt delegated acts to amend the types of intervention in accordance with Article 32.

2. These indicators shall be used in accordance with Articles 12(1), 17 and 37 of Regulation (EU) .../2021 [Common Provisions Regulation].

CHAPTER III

TRANSITIONAL AND FINAL PROVISIONS

Article 32

Exercise of the delegation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.
2. The power to adopt delegated acts referred to in Articles 13, 18, 28 and 31 shall be conferred on the Commission until 31 December 2028.
3. The delegation of powers referred to in Articles 13, 18, 28 and 31 may be revoked at any time by the European Parliament or by the Council. A decision of revocation shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.
4. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement on Better Law-Making of 13 April 2016.
5. As soon as it adopts a delegated act, the Commission shall simultaneously notify the European Parliament and to the Council thereof.
6. A delegated act adopted pursuant to Articles 13, 18, 28 and 31 shall enter into force only if neither the European Parliament nor the Council has expressed an objection within two months of being notified of it or if, before the expiry of that period, they have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or the Council.

Article 33

Committee procedure

1. The Commission shall be assisted by the Coordination Committee for the Asylum and Migration Fund, the Internal Security Fund and the Border Management and Visa Instrument. That Committee shall be a Committee within the meaning of Regulation (EU) No 182/2011.

2. Where reference is made to this paragraph, Article 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).

Article 34

Transitional provisions

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.
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.

Article 35

Entry into force and application

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

It shall apply from 1 January 2021.

This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaties.

Done at Strasbourg,

For the European Parliament
The President

For the Council
The President



EUROPEAN
COMMISSION

Strasbourg, 12.6.2018
COM(2018) 471 final

ANNEXES 1 to 8

ANNEXES

to the

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

establishing the Asylum and Migration Fund

{SWD(2018) 347} - {SWD(2018) 348} - {SEC(2018) 315}

[ANNEX II]

[Criteria for the allocation of funding to the programmes under shared management]

1. [The available resources referred to in Article 11 shall be broken down between the Member States as follows:
 - (a) Each Member State shall receive a fixed amount of EUR 5 000 000 from the Fund at the start of the programming period only;
 - (b) The remaining resources referred to in Article 11 shall be distributed based on the following criteria:
 - 30 % for asylum;
 - 30 % for legal migration and integration;
 - 40% for countering irregular migration including returns.
2. The following criteria in the area of asylum will be taken into account and shall be weighted as follows:
 - (a) 30 % in proportion to the number of persons who fall into one of the following categories:
 - Any third-country national or stateless person having been granted the status defined by the Geneva Convention;
 - Any third-country national or stateless person enjoying a form of subsidiary protection with the meaning of recast Directive 2011/95/EU¹;
 - Any third-country national or stateless person enjoying temporary protection within the meaning of Directive 2001/55/EC²
 - (b) 60 % in proportion to the number of third-country nationals or stateless persons who have applied for international protection.
 - (c) 10 % in proportion to the number of third-country nationals or stateless persons who are being or have been resettled in a Member State.
3. The following criteria in the area of legal migration and integration will be taken into account and shall be weighted as follows:
 - (a) 40% in proportion to the total number of legally residing third-country nationals in a Member State.
 - (b) 60% in proportion to the number of third-country nationals who have obtained a first residence permit.
 - (c) However, for the purpose of the calculation referred to in paragraph 3(b), the following categories of persons shall not be included:

¹ Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (OJ L 337, 20.12.2011, p. 9–26).

² Data to be taken into account only in case of the activation of the Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof (OJ L 212, 7.8.2001, p. 12–23).

- Third country nationals being issued a work-related first residence permits valid for less than 12 months;
 - Third-country nationals admitted for the purposes of studies, pupil exchange, unremunerated training or voluntary service in accordance with Council Directive 2004/114/EC³ or when applicable the Directive (EU) 2016/801⁴;
 - Third-country nationals admitted for purposes of scientific research in accordance with Council Directive 2005/71/EC⁵ or when applicable the Directive (EU) 2016/801.
4. The following criteria in the area of countering irregular migration including returns will be taken into account and shall be weighted as follows:
- (a) 50% in proportion to the number of third-country nationals who do not or no longer fulfil the conditions for entry and stay in the territory of the Member State and who are subject to a return decision under national and / or Community law, i.e. an administrative or judicial decision or act, stating or declaring the illegality of stay and imposing an obligation to return;
 - (b) 50% in proportion to the number of third-country nationals who have actually left the territory of the Member State following an administrative or judicial order to leave, whether undertaken voluntarily or under coercion.
5. For initial allocation the reference figures shall be the latest annual statistical data produced by the Commission (Eurostat) covering the preceding three calendar years on the basis of data provided by Member States on the date of the applicability of this Regulation in accordance with Union law. For the mid-term review, the reference figures shall be the latest annual statistical data produced by the Commission (Eurostat) covering the preceding three calendar years available at the time of the mid-term review in 2024 on the basis of data provided by Member States in accordance with Union law. Where Member States have not supplied the Commission (Eurostat) with the statistics concerned, they shall provide provisional data as soon as possible.
6. Before accepting these data as reference figures, the Commission (Eurostat) shall evaluate the quality, comparability and completeness of the statistical information in accordance with normal operational procedures. At the request of the Commission (Eurostat), Member States shall provide it with all the necessary information to do so.]

³ Council Directive 2004/114/EC of 13 December 2004 on the conditions of admission of third-country nationals for the purposes of studies, pupil exchange, unremunerated training or voluntary service (OJ L 375, 23.12.2004, p. 12–18).

⁴ Directive (EU) 2016/801 of the European Parliament and of the Council of 11 May 2016 on the conditions of entry and residence of third-country nationals for the purposes of research, studies, training, voluntary service, pupil exchange schemes or educational projects and au pairing (OJ L 132, 21.5.2016, p. 21–57).

⁵ Council Directive 2005/71/EC of 12 October 2005 on a specific procedure for admitting third-country nationals for the purposes of scientific research (OJ L 289, 3.11.2005, p. 15–22).

ANNEX II
Implementation measures

1. The Fund shall contribute to the specific objective set out in Article 3(2)(a) by focusing on the following implementation measures:
 - (a) ensuring a uniform application of the Union *acquis* and of the priorities related to the Common European Asylum System;
 - (b) supporting the capacity of Member States' asylum systems as regards infrastructures and services where necessary;
 - (c) enhancing solidarity and responsibility-sharing between the Member States, in particular towards those most affected by migratory flows, as well as providing support to Member States contributing to solidarity efforts;
 - (d) enhancing solidarity and cooperation with third countries affected by migratory flows, including through resettlement and other legal avenues to protection in the Union as well as partnership and cooperation with third countries for the purpose of managing migration.
2. The Fund shall contribute to the specific objective set out in Article 3(2)(b), by focusing on the following implementation measures:
 - (a) supporting the development and implementation of policies promoting legal migration and the implementation of the Union legal migration *acquis*;
 - (b) promoting early integration measures for the social and economic inclusion of third-country nationals, preparing their active participation in and their acceptance by the receiving society, in particular with the involvement of local or regional authorities and civil society organisations.
3. The Fund shall contribute to the specific objective set out in Article 3(2)(c), by focusing on the following implementation measures:
 - (a) ensuring a uniform application of the Union *acquis* and policy priorities regarding infrastructure, procedures and services;
 - (b) supporting an integrated and coordinated approach to return management at the Union and Member States' level, to the development of capacities for effective and sustainable return and reducing incentives for irregular migration;
 - (c) supporting assisted voluntary return and reintegration;
 - (d) strengthening cooperation with third countries and their capacities to implement readmission agreements and other arrangements, and enable sustainable return.

ANNEX III
Scope of support

1. Within the policy objective referred to in Article 3(1), the Fund shall in particular support the following:
 - (a) the establishment and development of national strategies in asylum, legal migration, integration, return and irregular migration;
 - (b) the setting up of administrative structures, systems and tools and training of staff, including local authorities and other relevant stakeholders;
 - (c) the development, monitoring and evaluation of policies and procedures including on collection and exchange of information and data, development and application of common statistical tools, methods and indicators for measuring progress and assessing policy developments;
 - (d) the exchanges of information, best practices and strategies, mutual learning, studies and research, the development and implementation of joint actions and operations and the setting-up of transnational cooperation networks;
 - (e) assistance and support services consistent with the status and the needs of the person concerned, in particular the vulnerable groups;
 - (f) actions aimed at enhancing awareness of asylum, integration, legal migration and return policies among stakeholders and the general public;
2. Within the specific objective referred to in Article 3(2)(a), the Fund shall in particular support the following actions:
 - (a) providing material aid, including assistance at the border;
 - (b) conducting asylum procedures;
 - (c) identifying applicants with special procedural or reception needs;
 - (d) establishing or improving reception accommodation infrastructure, including the possible joint use of such facilities by more than one Member State;
 - (e) enhancing the capacity of Member States to collect, analyse and disseminate country of origin information;
 - (f) actions related to the conducting of procedures for the implementation of the Union Resettlement [and Humanitarian Admission] Framework or national resettlement schemes that are compatible with the Union Resettlement Framework;
 - (g) transfers of beneficiaries of international protection;
 - (h) enhancing capacities of third countries to improve the protection of persons in need of protection;
 - (i) establishing, developing and improving effective alternatives to detention, in particular in relation to unaccompanied minors and families.
3. Within the specific objective referred to in Article 3(2)(b), the Fund shall in particular support the following:
 - (a) information packages and campaigns to raise awareness of legal migration channels to the Union, including on the Union legal migration *acquis*;

- (b) development of mobility schemes to the Union, such as circular or temporary migration schemes, including training to enhance employability;
 - (c) cooperation between third countries and the recruitment agencies, the employment services and the immigration services of Member States;
 - (d) the assessment of skills and qualifications acquired in a third country, as well as their transparency and compatibility with those of a Member State;
 - (e) assistance in the context of applications for family reunification within the meaning of Council Directive 2003/86/EC⁶;
 - (f) assistance in relation to a change of status for third-country nationals already legally residing in a Member State, in particular in relation to the acquisition of a legal residence status defined at Union level;
 - (g) early integration measures such as tailored support in accordance with the needs of third-country nationals and integration programmes focusing on education, language and other training such as civic orientation courses and professional guidance;
 - (h) actions promoting equality in the access and provision of public and private services to third-country nationals, including adapting them to the needs of the target group;
 - (i) cooperation between governmental and non-governmental bodies in an integrated manner, including through coordinated integration-support centres, such as one-stop shops;
 - (j) actions enabling and supporting third-country nationals' introduction to and active participation in the receiving society and actions promoting acceptance by the receiving society;
 - (k) promoting exchanges and dialogue between third-country nationals, the receiving society and public authorities, including through the consultation of third-country nationals, and intercultural and inter-religious dialogue.
4. Within the specific objective referred to in Article 3(2)(c), the Fund shall in particular support the following:
- (a) infrastructure for reception or detention, including the possible joint use of such facilities by more than one Member State;
 - (b) introduction, development and improvement of effective alternative measures to detention, in particular in relation to unaccompanied minors and families;
 - (c) introduction and reinforcement of independent and effective systems for monitoring forced return, as laid down in Article 8(6) of Directive 2008/115/EC⁷;
 - (d) countering incentives for irregular migration, including the employment of irregular migrants, through effective and adequate inspections based on risk

⁶ Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification, (OJ L 251, 03/10/2003 p. 12 – 18.).

⁷ Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals (OJ L 348, 24.12.2008, p. 98).

assessment, the training of staff, the setting-up and implementation of mechanisms through which irregular migrants can claim back payments and lodge complaints against their employers, or information and awareness-raising campaigns to inform employers and irregular migrants about their rights and obligations pursuant to Directive 2009/52/EC⁸;

- (e) preparation of return, including measures leading to the issuing of return decisions, the identification of third-country nationals, the issuing of travel documents and family tracing;
- (f) cooperation with the consular authorities and immigration services or other relevant authorities and services of third countries with a view to obtaining travel documents, facilitating return and ensuring readmission including through the deployment of third-country liaison officers;
- (g) return assistance, in particular assisted voluntary return and information about assisted voluntary return programmes;
- (h) removal operations, including related measures, in accordance with the standards laid down in Union law, with the exception of coercive equipment;
- (i) measures to support the returnee's durable return and reintegration;
- (j) facilities and services in third countries ensuring appropriate temporary accommodation and reception upon arrival, including for unaccompanied minors and other vulnerable groups in line with international standards;
- (k) cooperation with third countries on countering irregular migration and on effective return and readmission, including in the framework of the implementation of readmission agreements and other arrangements;
- (l) measures aimed at raising awareness of the appropriate legal channels for immigration and the risks of illegal immigration;
- (m) support for and actions in third countries, including on infrastructure, equipment and other measures, provided these contribute to enhancing effective cooperation between third countries and the Union and its Member States on return and readmission.

⁸ Directive 2009/52/EC of the European Parliament and of the Council of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals (OJ L 168, 30.6.2009., p. 24–32).

ANNEX IV

Actions eligible for higher co-financing in line with Articles 12(2) and 13(7)

- Integration measures implemented by local and regional authorities and civil-society organisations;
- Actions to develop and implement effective alternatives to detention;
- Assisted Voluntary Return and Reintegration programmes and related-activities;
- 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.

ANNEX V

Core performance indicators referred to in Article 28(1)

Specific objective 1: To strengthen and develop all aspects of the Common European Asylum System, including its external dimension:

1. Number of persons resettled with the support of the Fund.
2. Number of persons in the reception system as compared to the number of asylum applicants.
3. Convergence of protection recognition rates for asylum seekers from the same country.

Specific objective 2: To support legal migration to the Member States including to contribute to the integration of third-country nationals:

1. Number of persons who participated in pre-departure measures supported by the Fund.
2. Number of persons who participated in integration measures supported by the Fund reporting that the measures were beneficial for their early integration as compared to the total number of persons who participated in the integration measures supported by the Fund.

Specific objective 3: To contribute to countering irregular migration and ensuring effectiveness of return and readmission in third countries:

1. Number of returns following an order to leave compared to the number of third-country nationals ordered to leave.
2. Number of returnees who have received pre or post-return reintegration assistance co-financed by the Fund, as compared to the total number of returns supported by the Fund.

ANNEX VI
Types of intervention

TABLE 1: CODES FOR THE INTERVENTION FIELD DIMENSION

I. CEAS	
001	Reception conditions
002	Asylum procedures
003	Implementation of the Union acquis
004	Children in migration
005	Persons with special reception and procedural needs
006	Resettlement
007	Solidarity efforts between Member States
008	Operating support
II. Legal migration and integration	
001	Development of integration strategies
002	Victims of trafficking in human beings
003	Integration measures – information and orientation, one stop shops
004	Integration measures – language training
005	Integration measures – civics and other training
006	Integration measures – Introduction, participation, exchanges host society
007	Integration measures – basic needs
008	Pre-departure measures
009	Mobility schemes

010	Acquisition of legal residence
III. Return	
001	Alternatives to detention
002	Reception/detention conditions
003	Return procedures
004	Assisted voluntary return
005	Reintegration assistance
006	Removal/Return operations
007	Forced-return monitoring system
008	Vulnerable persons/UAMs
009	Measures addressing incentives for irregular migration
010	Operating support
IV. Technical assistance	
001	Information and communication
002	Preparation, implementation, monitoring and control
003	Evaluation and studies, data collection
004	Capacity building

TABLE 2: CODES FOR THE TYPE OF ACTION DIMENSION

001	Development of national strategies
002	Capacity building
003	Education and training for third-country nationals

004	Development of statistical tools, methods and indicators
005	Exchange of information and best practices
006	Joint actions/operations (between MS)
007	Campaigns and information
008	Exchange and secondment of experts
009	Studies, pilot projects, risk assessments
010	Preparatory, monitoring, administrative and technical activities
011	Provision of assistance and support services to TCN
012	Infrastructure
013	Equipment

TABLE 3: CODES FOR THE IMPLEMENTATION MODALITIES DIMENSION

001	Specific action
002	Emergency assistance
003	Cooperation with third countries
004	Actions in third countries
005	Strategic Union priorities

ANNEX VII
Eligible actions for operating support

Within the specific objective to strengthen and develop all aspects of the Common European Asylum System, including its external dimension, and the specific objective to contribute to countering irregular migration, ensuring effectiveness of return and readmission in third countries, operating support shall cover:

- staff costs;
- service costs, such as maintenance or replacement of equipment;
- service costs, such as maintenance and repair of infrastructure.

ANNEX VIII
Output and result indicators referred to in Article 28(3)

Specific objective 1: To strengthen and develop all aspect of the Common European Asylum System, including its external dimension:

1. Number of target group persons provided with assistance with the support of the Fund:
 - (a) Number of target group persons benefiting from information and assistance throughout the asylum procedures;
 - (b) Number of target group persons benefiting from legal assistance and representation;
 - (c) Number of vulnerable persons, victims of trafficking in human beings, and unaccompanied minors benefiting from specific assistance.
2. Capacity (number of places) in new reception accommodation infrastructure set up in line with the common requirements for reception conditions set out in the Union acquis and of existing reception accommodation infrastructure, improved in accordance with the same requirements as a result of the projects supported by the Fund and percentage in the total reception accommodation capacity;
3. Number of places adapted for unaccompanied minors (UAM) supported by the Fund as compared to the total number of places adapted for unaccompanied minors;
4. Number of persons trained in asylum-related topics with the assistance of the Fund, and that number as a percentage of the total number of staff trained in those topics;
5. Number of applicants for international protection transferred from one Member State to another with support of the Fund;
6. Number of persons resettled with the support of the Fund.

Specific objective 2: To support legal migration to the Member States including to contribute to the integration of third-country nationals:

1. Number of persons who participated in pre-departure measures supported by the Fund.
2. Number of local and regional authorities that have implemented integration measures with the support of the Fund.
3. Number of persons who participated in measures supported by the Fund focusing on:
 - (a) education and training;
 - (b) labour market integration;
 - (c) access to basic services; and
 - (d) active participation and social inclusion.
4. Number of persons who participated in integration measures supported by the Fund reporting that the measures were beneficial for their early integration as compared to

the total number of persons who participated in the integration measures supported by the Fund;

Specific objective 3: To contribute to countering irregular migration and ensuring effectiveness of return and readmission in third countries:

1. Number of places in detention centres created/renovated with support from the Fund, as compared to the total number of created/renovated places in detention centres.
2. Number of persons trained on return-related topics with the assistance of the Fund.
3. Number of returnees whose return was co-financed by the Fund as compared to the total number of returns following an order to leave:
 - (a) persons who returned voluntarily;
 - (b) persons who were removed.
4. Number of returnees who have received pre or post return reintegration assistance co-financed by the Fund, as compared to the total number of returns supported by the Fund.