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WORKING PAPER

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From:	Presidency
To:	JHA Counsellors on Financial Instruments
Subject:	Proposal for a Regulation of the European Parliament and of the Council establishing the Internal Security Fund - Compromise proposals

With a view to the informal meeting of the members of the JHA Counsellors on Financial instrument of 11 September 2020, delegations will find enclosed an extract from the 4-column table of the abovementioned draft Regulation relevant to this meeting as well as compromise proposals drafted by the Commission and from the rapporteur.

Delegations are kindly requested to send their comments to the Presidency (jens.schumacher@diplo.de; pol-in1-5-eu@brue.auswaertiges-amt.de; OeSI4@bmi.bund.de) and to the General Secretariat of the Council (MFF-Home@consilium.europa.eu) by Tuesday 15 September 2020.

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

- Article 1(2) (a) (b): whether Member States can agree with the Council Legal Service proposal in line 76 and the EP position in line 77?
- Article 12(4) (line 211): whether the Member States would be prepared to compromise on the percentage and if so how low? Which is the main priority - 50% or no limit for ICT?
- Annex VI (lines 458-461): whether the Member States, as part of a compromise, could accept the original COM proposal?
- Annex VIII (lines 504, 528): whether the Member States, as part of a compromise, could agree to withdraw the Council position?
- Annex VIII (line 533): EP considers one quantity of all drugs not as useful information. Therefore the question, whether the Member States could agree either using "value" instead of "quantity" of illicit drugs seized or report on the "quantities" of several important illicit drugs?
- Annex VIII (line 533): Whether the Member States could agree on adding some of the following additions? 2. Quantity of weapons seized in the context of cross-border joint operations by type of weapon. 3. Number of cross-border joint operations in which wildlife were seized. 4. Number of cross-border joint operations in which cultural goods were seized

We would also like your feedback on the Commission compromise draftings which are found in Annex II to the present document.

Regarding the EP proposal on "Intelligence cooperation" the EP is ready to drop its amendment on line 104 and to drop its additions to this topic in lines 31 and 45. It welcomes the agreement of the Council to its proposal on line 101. In exchange the EP expects a definition on "Competent authorities" (in Article 2, see Annex II) and a recital dedicated to the exchange of information. A proposal presented by the EP Rapporteur as well as one alternative proposal by the Commission, are found in Annex III. We would like to have your feedback on these and are open for possible compromise proposals from your side.

ANNEX I

Proposal for a

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

T: issue to be discussed at technical level, P: issue to be discussed at political level, H: Horizontal issue.

LEGEND

	Commission proposal COM(2018) 472 final (10154/18 + ADD 1)	EP amendments - Position at first reading (13 March 2019)	Council position Partial general approach (JHA Council on 7 June 2019) (10137/19)	LEGEND
1.				Not agreed
2.				Provisionally agreed
3.				Horizontal provision Not agreed
N.				Horizontal provision Provisionally agreed
				Not included in Council mandate

	Commission proposal COM(2018) 472 final (10154/18 + ADD 1)	EP amendments - Position at first reading (13 March 2019)	Council position Partial general approach (JHA Council on 7 June 2019) (10137/19)	Compromise text proposals
76		a) the objectives of the Fund;[AM36]		Council: T, H Sugg. CNS LS: the <i>policy objective</i> of the Fund EP: Technical, OK for “policy objective” if agreement on 77
77		b) <i>the specific objectives of the Fund and measures to implement those specific objectives</i> ;[AM36]		Council: T, H EP: Technical
131		2 b. <i>The total amount of funding for supporting actions in or in relation to third countries under the Member States' programmes in accordance with Article 12 shall not exceed, for each Member State, 2% of the total amount allocated to that Member State in accordance with Article 7(2)(a), Article 10(1) and Annex I.</i> [AM54]		See above.

			<i>2a. Multipurpose equipment and ICT systems financed under this Fund may be used for achieving the objectives of the Instrument for financial support for border management and visa established by Regulation (EU) No ...[BMVI], as long as the primary purpose of those equipment and ICT systems is in accordance with this Regulation and double-financing is avoided.</i>	EP: Need for discussion on links with line 136; should be turned into a recital. CION: doesn't support the Council amendment
134	(b) actions covering the purchase or maintenance of standard equipment, standard means of transport or standard facilities of the law-enforcement and other competent authorities referred to in Article 87 TFEU;	(b) actions covering the purchase or maintenance of standard equipment, standard means of transport or standard facilities of the law-enforcement and other competent authorities referred to in Article 87 TFEU;	(b) — actions covering the purchase or maintenance of standard equipment, standard means of transport or standard facilities of the law-enforcement and other competent authorities referred to in Article 87 TFEU;	T Council: provision is too limiting if as well percentages for all kinds of equipment apply, related also to outcome of debate on (a) EP, CION: standard equipment should not be eligible TM 31.08.20 To be discussed at political triologue together with lines 211, 231

211	4. A maximum of 15 % of the allocation of a Member State programme may be used for the purchase of equipment, means of transport or the construction of security-relevant facilities. This ceiling may be exceeded only in duly justified cases.	4. A maximum of 15 % of the allocation of a Member State programme may be used for the purchase of equipment, means of transport or the construction of security-relevant facilities. This ceiling may only be exceeded only in duly justified cases and following approval by the Commission. [AM81]	4. A maximum of 15 50 % of the allocation of a Member State programme may be used for the purchase of equipment, means of transport or the construction of security-relevant facilities. This ceiling may be exceeded only in duly justified cases. <i>This ceiling shall not apply to ICT equipment.</i>	T → P Council: related to standard equipment issue, does not wish ceiling for ICT EP: to reflect; need to align terminology throughout the text (ICT) CION: opposes higher percentage and unlimited ICT funding; open to explore higher ceiling;
458	32 TA-Technical assistance - information and communication	32 TA-Technical assistance - information and communication	32 TA-Technical assistance - information and communication	T CNS: COM proposal is too detailed and risks making reporting difficult; CNS is for transparency but this is a more practical matter - MS are concerned about how data will be collected. CION does not support Council's amendments on lines 458-461; those items are the same as in CPR, no reason for deviating EP in favour of full transparency on use of funds, i.e. to keep COM proposal TM 31.08.20 CNS to check internally

459	33 TA-Technical assistance - preparation, implementation, monitoring and control	33 TA-Technical assistance - preparation, implementation, monitoring and control	33 TA-Technical assistance - preparation, implementation, monitoring and control	T TM 31.08.20 CNS to check internally
460	34 TA-Technical assistance - evaluation and studies, data collection	34 TA-Technical assistance - evaluation and studies, data collection	34 TA-Technical assistance - evaluation and studies, data collection	T TM 31.08.20 CNS to check internally
461	35 TA-Technical assistance - capacity building	35 TA-Technical assistance - capacity building	35 TA-Technical assistance - capacity building	T TM 31.08.20 CNS to check internally
504			5. Number of transport means purchased	EP 30.04.20 Deletion Number of transport means purchased TM 31.08.20 CNS to check internally
528			2. Number of ICT systems/functionalities/services developed/maintained/upgraded	EP 30.04.20 Number of ICT systems/functionalities/services developed/maintained/upgraded TM 31.08.20 EP + COM: redundant CNS positive scrutiny

533			2. Quantity of illicit drug seized in the context of cross-border operations	See line 549 EP 30.04.20 1. Quantity of illicit drugs seized in the context of cross-border joint operations <i>by type of product</i>* -covers proposed indicator 7 *- to address differences in weight, value etc. 2. Quantity of weapons seized in the context of cross-border joint operations by type of weapon** 3. Number of cross-border joint operations in which wildlife were seized 4. Number of cross-border joint operations in which cultural goods were seized ** - covers EP AM 137 TM 31.08.20 CNS to check internally re value vs quantity
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INTERNAL SECURITY FUND

- Additional compromise drafting

Article 2 - definitions	
88	COM compromise drafting: g) ‘exchange of and access to information’ means the secure collection, storage, processing, analysis, access to and exchange transfer of information relevant to the authorities referred to in Article 87 of the Treaty of the Functioning of the European Union (TFEU) as well as to Europol and other relevant Union agencies in relation to the prevention, detection, investigation, and prosecution of criminal offences, in particular cross-border, serious and organised crime and terrorism ;
NEW	(x) ‘Competent authorities’ means all Member States’ authorities responsible for the prevention, detection and investigation of criminal offences, as referred to in Article 87 of the TFEU such as police, customs and other specialised law enforcement services

Recital (31) line 45

(31) To complement the implementation of its policy objective at national level through Member States’ programmes, the Fund should also provide support for actions at Union level. Such actions should serve overall strategic purposes within the scope of intervention of the Fund relating to policy analysis and innovation, transnational mutual learning and partnerships and the testing of new initiatives and actions across the Union *or among certain Member States*. *[In this regard, cooperation between Member States’ competent authorities including intelligence services should be encouraged with a view to ensure the necessary information exchange to enhance the effectiveness of the fight against terrorism as well as serious and organised crime, and to contribute to a better understanding of their cross-border nature.] The Fund should support Member States’ efforts, including also at local level, to exchange best practice and to promote joint training, including awareness raising among law-enforcement staff regarding all forms of radicalisation and all forms of discrimination that may could lead to violence, such as antisemitism, antiziganism and other forms of racism. For this purpose, specialised exchange programmes for junior law-enforcement staff could be funded. ~~in order to help develop a culture of cooperation and mutual trust between intelligence services as well as between intelligence services and Europol.]~~**

*Please note that this recital 31 is about Union Actions, but as there was already text on the intelligence service, COM has added some new words there. However, we would also support adding a separate recital for the intelligence services along the same lines.

Article 3 - objectives	
99	COM compromise drafting: 1. The policy objective of the Fund shall be to contribute to ensuring a high level of

	security in the Union, in particular by <i>preventing and combating and tackling</i> terrorism and radicalisation, serious and organised crime, and cybercrime, and by assisting and protecting victims of crime as well as by preparing for, protecting against and effectively managing security related incidents, risks and crises within the scope of this Regulation.		
	COM proposal	EP amendment	Council PGA
102	(b) to intensify cross-border joint operations among and within the Union law enforcement and other competent authorities in relation to serious and organised crime with a cross-border dimension; and	(b) to <i>improve and intensify cross-border coordination and cooperation, including relevant joint operations among and within the Union Member States'</i> law enforcement and other competent authorities in relation to <i>terrorism, and serious and organised crime with a cross-border dimension; and</i> [AM45]	(b) to intensify cross-border joint operations among and within the Union law enforcement and other competent authorities in relation to <i>all forms of crime, in particular to terrorism and serious and organised crime with a cross-border dimension; and</i>
	COM compromise drafting: (b) to <i>improve and intensify cross-border cooperation including joint operations among and within Member States'</i> the Union law enforcement and other competent authorities in relation to <i>all forms of crime, in particular to terrorism and serious and organised crime with a cross-border dimension; and</i>		
	COM proposal	EP amendment	Council PGA
103	(c) to support effort at strengthening the capabilities in relation to combatting and preventing crime including terrorism in particular through increased cooperation between public authorities, civil society and private partners across the Member States.	(c) to support effort at <i>the necessary strengthening of the capabilities of the Member States</i> in relation to combatting and preventing crime, including terrorism, <i>cybercrime and violent extremism, including radicalisation,</i> in particular through increased cooperation between public authorities, <i>the relevant Union agencies,</i> civil society and private partners <i>actors, within and across the Member States, and civilian crisis management following a</i>	(c) to support effort at strengthening the capabilities in relation to combatting and preventing crime including and terrorism <i>including in particular</i> through increased cooperation between public authorities, and all the relevant actors including civil society and private partners across the Member States.

	<i>security-related incident</i> ; [AM46]	
	COM compromise drafting: (c) to support the necessary effort at strengthening <i>of the Member States'</i> capabilities of in relation to preventing and combating crime, including terrorism, and radicalisation <i>as well as managing security-related incidents, risks and crises, including in particular</i> through increased cooperation between public authorities, the relevant Union agencies, actors including civil society and private partners across the Member States.”	

Article 12 – programmes			
	COM proposal	EP amendment	Council PGA
208	2. The Commission shall ensure that the Union Agency for Law Enforcement Cooperation (Europol), the European Union Agency for Law Enforcement Training (CEPOL) and the European Monitoring Centre for Drugs and Drug Addiction (EMCDDA) are associated to the development of the programmes at an early stage, as regards the areas of their competence. Specifically, Member States shall consult Europol on the design of their actions in particular when including EU policy cycle or EMPACT actions or actions coordinated by the Joint Cybercrime Action Taskforce (J-CAT) in their programmes. Prior to including training in their programmes, Member States shall coordinate with CEPOL in order to avoid overlaps.	2. The Commission shall ensure that the Union Agency for Law Enforcement Cooperation (Europol), the European Union Agency for Law Enforcement Training (CEPOL), <i>the European Union Agency for Criminal Justice Cooperation (Eurojust), the European Public Prosecutor's Office (EPPO), the European Union Network and Information Security Agency (ENISA), the European Agency for the operational management of large-scale IT Systems (eu-LISA), the European Border and Coast Guard Agency (EBCGA), the European Union Agency for Fundamental Rights (FRA)</i> and the European Monitoring Centre for Drugs and Drug Addiction (EMCDDA) are associated to the <i>involved in the programme</i> development of the programmes at an early stage <i>from the outset</i>, as regards the areas of their competence. Specifically, Member States shall consult Europol on the design of their actions in particular when including EU policy cycle or	2. <i>At an early stage of the programming,</i> the The Commission shall ensure that the <i>consult</i> the Union Agency for Law Enforcement Cooperation (Europol), the European Union Agency for Law Enforcement Training (CEPOL) and the European Monitoring Centre for Drugs and Drug Addiction (EMCDDA) are associated to the development of the programmes <i>consulted at an early stage</i>, as regards the areas of their competence.

		EMPACT actions or actions coordinated by the Joint Cybercrime Action Taskforce (J-CAT) in their programmes. Prior to including training in their programmes, Member States shall coordinate with CEPOL in order to avoid overlaps. <i>Members States shall also consult other relevant stakeholders, including civil society organisations, on the planning of their actions.</i> [AM79]	
	COM compromise drafting: 2. The Commission shall ensure that the Union Agency for Law Enforcement Cooperation (Europol), the European Union Agency for Law Enforcement Training (CEPOL) and the European Monitoring Centre for Drugs and Drug Addiction (EMCDDA) <i>and other agencies such as the European Agency for the operational management of large-scale IT Systems (eu-LISA), the European Border and Coast Guard Agency (EBCGA) when relevant and within their respective mandates,</i> are associated to the development of the programmes at an early stage, as regards the areas of their competence.		
	COM proposal	EP amendment	Council PGA
209			2a. SpecificallyIn order to avoid overlaps, Member States shall consult <i>inform</i> Europol,or EMCDDA or CEPOL on the design of their actions <i>when including in their programmes EU Policy Cycle operational actions or other actions related to the areas of competence of the abovementioned agencies in particular</i> when including EU policy cycle or EMPACT actions or actions coordinated by the Joint Cybercrime Action Taskforce (J-CAT) in

			their programmes. Prior to including training in their programmes, Member States shall coordinate with CEPOL in order to avoid overlaps.
	COM compromise drafting: 2a. Specifically, in order to avoid overlaps, Member States shall consult Europol on the design of their actions in particular when including EU policy cycle (EMPACT) operational or EMPACT actions or actions coordinated by the Joint Cybercrime Action Taskforce (J-CAT) in their programmes or other actions related to the areas of competence of the other above mentioned agencies. Prior to including training in their programmes, Member States shall coordinate with CEPOL in order to avoid overlaps.		
	COM proposal	EP amendment	Council PGA
210	3. The Commission may associate the Union Agency for Law Enforcement Cooperation (Europol), the European Union Agency for Law Enforcement Training (CEPOL) and the European Monitoring Centre for Drugs and Drug Addiction (EMCDDA) where appropriate in the monitoring and evaluation tasks as specified in Section 5 in particular in view of ensuring that the actions implemented with the support of the Fund are compliant with the relevant Union <i>acquis</i> and agreed Union priorities.	3. The Commission may associate the Union Agency for Law Enforcement Cooperation (Europol), the European Union Agency for Law Enforcement Training (CEPOL) and the European Monitoring Centre for Drugs and Drug Addiction (EMCDDA) Agencies referred to in paragraph 2, the European Data Protection Board and the European Data Protection Supervisor (EDPS) where appropriate in the monitoring and evaluation tasks as specified in Section 5 in particular in view of ensuring that the actions implemented with the support of the Fund, which fall within their mandate, are compliant with the relevant Union <i>acquis</i> and agreed Union priorities.[AM80]	3. The Commission may associate the Union Agency for Law Enforcement Cooperation (Europol), the European Union Agency for Law Enforcement Training (CEPOL) and the European Monitoring Centre for Drugs and Drug Addiction (EMCDDA) where appropriate in the monitoring and evaluation tasks as specified in Section 5 in particular in view of ensuring that the actions implemented with the support of the Fund are compliant with the relevant Union <i>acquis</i> and agreed Union priorities.
	COM compromise drafting: 3. The Commission may associate the Agencies referred to in paragraph 2, Union Agency for Law Enforcement Cooperation (Europol), the European Union Agency for Law Enforcement Training (CEPOL) and the European Monitoring Centre for Drugs		

	and Drug Addiction (EMCDDA) where appropriate, in the monitoring and evaluation tasks as specified in Section 5 in particular in view of ensuring that the actions implemented with the support of the Fund, which fall within their mandate , are compliant with the relevant Union <i>acquis</i> and agreed Union priorities.
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Article 15 – operating support	
234	Align references to annex VII which is called “Eligible actions for operating support”
235	- > specific tasks and services on lines 234 and 235 could be changed to actions or eligible actions

EP proposal 07/09

In connection with the political trilogue on 8 September 2020, the rapporteur presented a proposal for a new recital which could accompany the definition of "competent authorities" in article 2.

The cross-border nature of serious crime and terrorism requires a coordinated response and cooperation within and between Member States and with competent Union bodies. Law enforcement authorities and the intelligence community both hold valuable information to effectively fight serious and organised crime and terrorism and to allow for a better understanding of their cross-border nature. To accelerate information exchange and to improve the quality of information shared it is crucial to build mutual trust. To this end, existing structures such as the Counter Terrorism Group (CTG) should be reinforced and new approaches to cooperation and information exchange between intelligence services explored. The Fund should support competent authorities of Member States responsible for the prevention, detection and investigation of criminal offences as referred to in Article 87 of the TFEU insofar as their activities are covered by the scope. It should be ensured that all funded activities fully preserve the necessary separation between law enforcement and intelligence work and the required principles of information ownership.

COM alternative drafting 07/09

The cross-border nature of serious and organised crime and terrorism requires a coordinated response and cooperation within and between Member States and with competent Union bodies. Law enforcement authorities and the intelligence community both hold valuable information to effectively fight serious and organised crime and terrorism. To accelerate information exchange and to improve the quality of information shared it is crucial to build mutual trust. To this end, existing structures such as the Counter Terrorism Group (CTG) should be reinforced and new approaches to cooperation and information exchange between competent authorities, including intelligence services should be explored. The Fund should support competent authorities of Member States responsible for the prevention, detection and investigation of criminal offences as referred to in Article 87 of the TFEU insofar as their activities are covered by the scope. It should be ensured that all funded activities fully preserve the necessary separation between law enforcement and intelligence work and the required principles of information ownership.

EP proposal 08/09

The rapporteur also proposed to change the EP AM 94 as follows.

Access to funding for decentralised agencies - line 255

Compromise proposal by EP Rapporteur

Article 17(3a) - Union actions

Exceptionally, decentralised agencies may also be eligible for funding within the framework of Union actions *when they assist in the implementation of Union actions falling within the agencies' competence and those actions are not covered by the Union contribution to the budget of the agencies through the annual budget.*

See also Art. 7 of the COMMISSION DELEGATED REGULATION (EU) 2019/715 on the framework financial regulation for the bodies set up under the TFEU and Euratom Treaty and referred to in Article 70 of Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council (<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32019R0715&qid=1558971402511&from=EN>).