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MEETING DOCUMENT

From:	General Secretariat of the Council
To:	JHA Counsellors on Financial Instruments
N° Cion doc.:	10154/18
Subject:	Proposal for a Regulation of the European Parliament and of the Council establishing the Internal Security Fund - Compilation of replies

Delegations will find enclosed a revised compilation of replies to WK 9105/20 on the above proposal.

WRITTEN COMMENTS SUBMITTED BY THE MEMBER STATES
Proposal for a Regulation of the European Parliament and of the Council
establishing the Internal Security Fund
WK 9105/20

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AUSTRIA

- **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?**

Art. 3 (1) refers to “policy objective of the Fund” and Art. 3 (2) and (3) states inter alia to “specific objectives” and these “shall be implemented through the implementation measures listed in Annex II”

- Therefore the wording is in line with the current text and AT can agree with the proposals in line 76 and 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?**

Referring to the objectives of the Fund in Art. 3 and the implementation measures in Annex II adequate equipment as well as ICT technologies and services are explicitly mentioned. Basically there should be no ceiling neither for equipment nor for ICT and it should be left to the individual programme.

According to Art. 4 (3) “actions covering the purchase or maintenance of standard equipment, standard means of transport or standard facilities ...” are not eligible.

One can make out a case for both opinions:

E.g. in the field of danger prevention or in the forensic sector state-of-the-art equipment is crucial for preventing/fighting crime.

On the other hand there is no way to get along in the field of preventing/fighting crime without state-of-the-art ICT equipment.

Therefore this is not a question of what is more important but a question on what the programmes of the Fund should focus.

- First AT supports the term “ICT” as a broader term for Information Technology (IT), which refers to all communication technologies, including the internet, wireless networks, cell phones, computers, software, middleware, video-conferencing, social networking, and other media applications and services.
- And second AT can support a percentage of 20% + no limit for ICT.

- **Annex VI (lines 458-461): whether the Member States, as part of a compromise, could accept the original COM proposal?**

AT can accept the original COM proposal although it will cause unnecessary difficult reporting-work.

- **Annex VIII (lines 504, 528): whether the Member States, as part of a compromise, could agree to withdraw the Council position?**

Although we do not understand the reason for this deletion: above in connection with Art. 12 (4) the percentage for inter alia the purchase of means of transport is an issue and in Annex VIII the reference as indicator is deleted?

- AT can accept the deletion “number of transport means purchased”

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?

The statistics of seized drugs split the data regarding the important drugs – reporting on this will cause no additional workload.

The overall goal should be that collected data are comparable so that valid results of European Funds will be available. Justifications of COM in regard with “value” were not convincing.

- Therefore AT supports reporting 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**

AT would be very much in favour of having information about all planned indicators according to the current negotiations before accepting additional indicators.

- **Continue 4-column-table regarding line 131:**

Line 131, Art. 4 (2b): AT strictly opposes to introduce a limit for the so-called “external dimension of security”. The proposed limitation would be contrary to the Union’s objective of ensuring a high level of security as set down in the Fund-Regulation and strategic documents of the Union in the area of security. Additionally it is crucial for the security in the Union to implement preventing measures and fight crime in- and outside the EU.

Feedback on the Commission compromise draftings which are found in Annex II to the present document.

Line 88, Article 2 - definition COM compromise drafting

- AT can accept the proposal for Art. 2 (g) and the new (x) [as this is quite the same wording as Art. 87 (1) TFEU]

“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.”

In Art. 3 EP proposal on “Intelligence cooperation” will be dropped and through this proposed recital which should accompany the definition of “competent authorities” in article 2 it will be re-introduced (in EPs proposal as well as in COM alternative proposal).

- To better align with Art. 87 TFEU and the definition of “competent authorities” AT proposes to delete all references to “intelligence community”, “intelligence services” etc. and references to the “Counter Terrorism Group”.

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.

- AT welcomes the deletion in line 104, Art. 3 (2) (c a) [AM47] and in line 45, recital 31 and will agree to the current proposal of the recital.

Question regarding the following item:

- “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.”
- EP is ready to drop its amendments on “intelligence cooperation” – Question: “For what reason a separate recital for the intelligence services along the same lines should be added?”

Line 255, Article 17 (3a) – Union Actions; Annex III – EP proposal 08/09

- AT agrees with EP compromise proposal

Continue ANNEX II:

Article 3 – objectives:

Line 99, Article 3 (1): AT accepts COM compromise although continues to be in favour of dropping references to risk & crises

Line 102, Article 3 (2) (b): AT agrees COM compromise drafting

Line 103, Article 3 (2) (c): Having in mind EP reference to civilian crises in the aftermath of a terrorist attack and supporting the goal of finding a compromise the current proposal by COM is a well-balanced compromise – AT agrees

Article 12 – programmes

Line 208, 209, 210 Article 12 (2) (2a) and (3): AT agrees to COM compromise draftings

Article 15 – operating support

Line 234 and Line 235: the final wording of Art. 15 (5) and (6) on basis of the proposed “alignments” is not quite clear – therefore AT neither agrees nor opposes

BULGARIA

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?	We support the text of Article 12 (4) as set in the ISF Council Partial General Approach of June 2019. We would like to reiterate our position that the purchase of equipment and means of transport or the construction of security-relevant facilities could be significant components of the activities contributing to achieving the ISF objectives. In order to effectively tackling cross-border crime and terrorism law enforcement authorities should be provided with the relevant, high quality, interoperable and state of the art technology and equipment.	
Annex VIII (lines 504, 528): whether the Member States, as part of a compromise, could agree to withdraw the Council position?	We supported the inclusion of the proposed indicator as per the Council position in PGA with a view to better reflect the implementation of the relevant actions in Annex III. As a compromise, we could support the withdrawal of the Council position for inclusion of the proposed indicator, provided this does not lead to the ineligibility of actions related to the purchase of transport means under SO 1.	We supported the inclusion of the proposed indicator as per the Council position in PGA with a view to better reflect the implementation of the relevant actions in Annex III. As a compromise, we could support the withdrawal of the Council position for inclusion of the proposed indicator, provided this does not lead to the ineligibility of actions related to the development/maintenance/upgrade of ICT systems under SO 2.
We would also like your feedback on the Commission compromise draftings which are found in Annex II to the present document. Article 3 - objectives COM compromise drafting	(b) to improve and intensify cross-border cooperation including joint operations among and within Member States' the Union law enforcement and other competent authorities in relation to <i>all forms of crime, in particular to terrorism</i> and serious and organised crime with a cross-border dimension; and	We could support the COM compromise drafting
	(c) to support the necessary effort at strengthening of the Member States' capabilities of in relation to preventing and combating crime, including terrorism, and radicalisation as well as managing security-related incidents, risks and crises, including in particular through increased cooperation between public authorities, the relevant Union agencies, actors including civil society and private partners across the Member States."	We could support the COM compromise drafting

CROATIA

- Article 1(2)(a)(b) – we can support the proposal of the Council Legal Service in line 76, as well as the position of the European Parliament in line 77
- Article (12)(4)(line 211) – HR is of the opinion that the priority should be the abolition of restrictions for the procurement of equipment, means of transport.

HR is of the opinion that the minimal percentage should not be lower than 50% and it does not support a percentage smaller than the current position of the Council. Likewise, the restriction should not be applied to ICT;

- Annex VI (lines 458-461) – HR is in favour of the Council position; however, it is aware that the ISF Regulation should fully comply with the CPR and it is therefore ready to support the initial proposal of the European Commission in case of harmonizing the wording with the CPR;
- Annex VIII (lines 504, 528) – HR prefers the Council position, but it can be flexible;
- Annex VIII (line 533) – HR cannot support the proposal of the European Parliament to use the indicator “value of confiscated drugs” or to use the indicators of quantity of several types of drugs. HR is of the opinion that the indicator of financial value of confiscated drugs is by no means acceptable especially because it refers to a prohibited commodity and the black market where prices vary depending on supply and demand and drug prices on the black market are not the same in all Member States. HR considers that drugs should not be valued in money and therefore it proposes the following as an indicator of measurability:
 - the number of initiated and the number of conducted criminal investigations for the prevention of drug smuggling and trafficking;
 - the number of arrested persons connected with drug smuggling and trafficking;
 - the quantity of confiscated drugs categorised into: heroin, cocaine, cannabis and synthetic drugs.

The stated methodology to measure the performance is also encompassed by the EMPACT Action Plan on Drugs – point 2.8. The HR proposal is also to harmonise the ISF indicators with the EMPACT indicators.

- Regarding Annex II of the document WK 9105/20 INIT, HR can be flexible in relation to the new compromise proposals.
- Regarding Annex III of the document WK 9105/20 INIT, HR is not in favour of mentioning intelligence agencies in the Regulation, nor in its recitals. Concerning the new compromise proposal of the European Parliament on the financing of decentralised agencies under “Union Actions”, HR is in principle against DAs being funded under ISF, but it is ready to demonstrate certain flexibility for such a proposal of the European Parliament according to which their financing would be an exception and under certain conditions and if such “relaxation” would contribute to a better position of the Council in the negotiations on the abolition of restrictions for the procurement of equipment, the deletion of intelligence agencies from the text of the Regulation etc.

ESTONIA

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?	EE can agree with the proposed lines 76 and 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?	EE supports the agreed PGA. At the same time, we recognize the urgency to reach the agreement with the EP. In that spirit, we are willing to show some flexibility. The most preferred compromise would be to lower the percentage by half compared to the agreement in the PGA (i.e. 25%) while excluding the ICT equipment from the limitation. If this proposal is not accepted, then the main priority for the EE is to keep the ICT equipment out of the limit. ICT systems, especially large EU IT-systems are a high priority of the Union and all these systems need to be accommodated. At the moment, there is no clear overview of the final needs and the estimation of accompanying costs.
Annex VI (lines 458-461): whether the Member States, as part of a compromise, could accept the original COM proposal?	EE supports the Council mandate, which is less burdensome and simplifies the implementation of the funds. There was an agreement reached in the trilogues of the CPR regulation that for AMIF, ISF and BMVI, only the flat-rate approach is used for the TA. The Union contribution for the TA shall be reimbursed pursuant to point (e) of Art 46 in the CPR. The amounts allocated to the TA correspond to, and the reimbursement is made by applying the fixed percentage set out in Art 30 (6% for the HOME funds). If the costs are reimbursed by using the flat-rate financing, additional reporting by categories is excessive.
Annex VIII (lines 504, 528): whether the Member States, as part of a compromise, could agree to withdraw the Council position?	EE can agree to the deletion of line 504 - the purchase of transport means may, indeed, not be appropriate under the SO1 (Better information exchange). The deletion of line 528 is more questionable as

	developing/maintaining/upgrading ICT systems may also be relevant under the SO2 (Increased operational cooperation). EE prefers the Council position in this regard.
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?	EE can agree to report on the quantities by type of product. EE does not support using "value" instead of "quantity". Using "value" does not give an adequate overview as the prices differ considerably between countries/regions. Quantity is measurable and comparable.
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	EE is hesitant concerning the indicators, as there is a lot of ambiguity. The proposed result indicators under the SO2 need to be explained more. During the negotiations in the Council Working Party, COM has agreed that there needs to be a separate discussion on the indicators (the definitions, practical aspects etc.). The proposed new indicators (<i>Quantity of weapons seized in the context of cross-border joint operations by type of weapon; Number of cross-border joint operations in which wildlife were seized; Number of cross-border joint operations in which cultural goods were seized</i>) raise a lot of practical questions. How will these be measured and what is the basis for the calculation? The indicators should be fund relevant. Does that mean that only the joint operations funded by the ISF should be considered? When people who have received relevant training with the ISF funding, take part in the joint operation (which itself is not funded by the ISF) – does this joint operation need to be included in the indicators? When means of transport or equipment purchased with the ISF funding are used in the joint operation, is this operation considered in the proposed indicators? How is the calculation in this case, pro rata, an estimation?

We would also like your feedback on the Commission compromise draftings which are found in Annex II to the present document.	Article 2 - definitions „<i>Exchange of information</i>“– EE can agree to the COM compromise drafting. „<i>Competent authorities</i>“– EE can agree to the proposed wording. Recital (31) line 45 – EE can agree to the part of the recital, which is <u>not</u> bracketed [in grey]. EE does not support adding a clear reference to intelligence services in the recital. Article 3 - objectives 99 (Policy objective) – EE can agree to the COM compromise drafting. 102 – EE can agree to the COM compromise drafting. 103 – EE can agree to the COM compromise drafting. Article 12 (Programmes) 208 – EE can in principle agree to the proposal. However, it should be guaranteed that this does not delay the approval process. 209 – COM consults with the relevant agencies in the current period. EE supports that this practice is continued. It is not feasible for the MSs to implement this obligation. The main goal is to guarantee that the programming exercise is not further delayed. If this proposal is not achievable, EE can agree with using “inform” instead of “consult”. 210 – EE can agree to the COM compromise drafting. Article 15 (operating support) – EE can agree to the proposed wording.
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	EE does not support adding a clear reference to intelligence services in the recital nor adding a separate specific objective on this subject. Law enforcement cooperation between MSs must be promoted in line with the TFEU. Regulating cooperation and information exchange between national intelligence services comes into conflict with national prerogatives in the area of national security (Art. 4 (2) TEU).

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.	If there is no room for compromise in this matter then EE proposes to add a clarification into the COM alternative drafting (in red): <i>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, taking into account the division of competences between the Union and Member States. 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.</i>
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Line 131 – EE is in general not supportive concerning any percentage limitations or thresholds. These restrict the right of MSs to choose the most appropriate measures to achieve the objectives of the Fund while taking account the actual challenges and needs. However, EE can show a degree of flexibility when it comes to funding actions in or in relation to third countries.

At the same time, EE is very much behind the Council position concerning the same article. Namely, adding a new sub-paragraph 2a (the use of multi-purpose equipment and ICT systems).

Line 134 – EE can be flexible concerning the standard equipment limitation provided that the standard equipment is clearly defined and unambiguous to all MSs. At the same time, it is useful to point out that we do not consider this provision to be necessary at all as “actions limited to the maintenance of public order at national level” are not eligible from the ISF and this covers also the standard equipment. The concept of “standard equipment” has been explained in Fiche no. 2 from 12 September 2018. According to this Fiche: *Standard equipment, standard means of transport and standard facilities are considered as equipment, means of transport and facilities of purely national relevance and thus should not be financed by the Fund, but by the Member States national budgets.*

FINLAND

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?

- We can agree with the Council Legal Service proposal in line 76 and also be flexible on 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?

- We can agree to have a lower percentage here. Our priority here is the ICT.

Annex VI (lines 458-461): whether the Member States, as part of a compromise, could accept the original COM proposal?

- We can be flexible here regarding the lines 458-461 and accept the original COM proposal as part of a compromise. However, we still have our doubts on this in practice.

Annex VIII (lines 504, 528): whether the Member States, as part of a compromise, could agree to withdraw the Council position?

- We can be flexible here as part of a compromise.

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?

- Regarding this matter, we see that "quantity" and "value" could both be used when appropriate.

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 could be flexible here.

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

- We could approve Commission's compromise drafting ("NEW") regarding Article 2. We support the wording in Article 2 paras (g) and (x).
- Recital accompanying Article 2 can be supported with some amendments. Finland is against referring to the CTG and intelligence services in this recital. EU mandate does not cover national security (see Article 4(2) TEU), furthermore Article 87 TFEU and Article 2 in this proposed Regulation do not include intelligence authorities. Therefore, we do not see the need to refer to intelligence authorities nor to the CTG in this recital or Regulation. CTG is not an EU working structure. It is a working structure between national security and intelligence authorities and it is entirely outside the EU's mandate. We do not see the need to refer to CTG in this Regulation.

- Finland proposes the following wording that would be in line with the EU Treaties (we have marked with yellow the words below which should be deleted):

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.

FRANCE

English translation by the General Secretariat's translation service.

The French authorities are in favour of the following compromise proposals, for which we thank the Presidency:

- Article 1(2) (a) (b): Council proposal in line 76 and European Parliament proposal in line 77;
- Annex VI (lines 458-461): Commission compromise proposal;
- Annex VIII (lines 504, 528): withdrawal of the Council position;
- Annex VIII (line 533): addition of the following criteria within this annex:
 - 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;
- COM amendments to Article 3, specifically in lines 102 and 103;
- COM amendment to Article 12(3);
- Non-substantive amendment to Article 15;
- European Parliament compromise on Article 17(3a): in relation to which the French authorities highlight the importance of the exceptional nature of recourse to ISF funding by the agencies.

However, we are opposed to the following compromise proposals:

- Article 12(4) (line 211): The compromise proposal concerns the percentage of funding to be used for equipment and the choice between prioritising the 50 % ceiling for standard equipment or having no ceiling for funding for ICT.

We are not in favour of the proposed alternative and recall that there was broad consensus on a ceiling set at 50 % for purchase of equipment when the partial general approach was agreed. Likewise, excluding ICT from this ceiling is an objective which must absolutely be pursued, given that major challenges such as the implementation of interoperability between ICT systems will have to be financed in particular via the ISF. We ask the Presidency to pursue these two objectives jointly ahead of the technical trilogues. They are important for the effectiveness of the text and its added value in terms of security for the Union.

- COM amendments to Articles 12(2) and 12(2a): We are opposed to it being compulsory for Member States to associate the agencies when implementing the national programmes. It is not for the agencies to intervene in Member States' internal security policy; the Member States themselves remain the sole decision-makers when developing their national programmes.

- As regards the intelligence services, we would point out once again that intelligence-related activities are national prerogatives (in accordance with Article 4 TEU). Moreover, changes to existing structures and the level of cooperation and exchange between services should not be mentioned in this context as they are subject to the third party principle. This position is an absolute red line.
- In addition, the ISF is primarily intended to finance police and judicial cooperation projects. Therefore, we ask that the **Parliament's previous amendments be withdrawn** (lines 31, 45 and 104), **we reject the proposed definition of 'competent authorities'**, and we insist that **intelligence should not be mentioned in recital 31**. Such a reference to these intelligence services would be particularly problematic in terms of managing and implementing the fund: the confidentiality requirements of these services preclude the transparency required in the management of structural funds, meaning that the management authorities of national programmes would be unable to respect the audit trail requirements if these services were beneficiaries or even a target group. We are therefore **against opening to these services in any way**.
- Annex VIII (line 533): As to whether Member States could agree to use the term 'value' instead of 'quantity' of illicit drugs seized or to report on the 'quantities' of several major illicit drugs under this annex, we are opposed to a reference to the value of seizures. The price of a narcotic substance depends on several factors (purity, local market conditions, etc.). Price is consequently not a reliable indicator. We believe that the indicator should relate to the quantities and recall that this is also the indicator used by the EMCDDA.

Les autorités françaises sont favorables aux compromis proposés suivants, pour lesquels elles remercient la Présidence:

- Article 1(2) (a) (b): lignes 76 du Conseil et 77 du Parlement européen;
- Annexe VI (lignes 458-461): compromis proposé par la Commission;
- Annexe VIII (lignes 504, 528): retrait de la position du Conseil;
- Annexe VIII (ligne 533): sur l'ajout des critères suivants au sein de cette annexe:
 - 2. Quantité d'armes saisies dans le cadre d'opérations conjointes transfrontalières par type d'arme.
 - 3. Nombre d'opérations conjointes transfrontalières au cours desquelles des animaux sauvages ont été saisis.
 - 4. Nombre d'opérations conjointes transfrontalières au cours desquelles des biens culturels ont été saisis;
- Amendements par la COM de l'article 3, plus précisément aux lignes 102 et 103;
- Amendement par la COM de l'art 12 (3);
- Amendement cosmétique de l'art 15;
- Compromis du Parlement européen de l'art 17 (3a): au sujet duquel les autorités françaises marquent l'importance du caractère exceptionnel d'un recours au financement FSI par les agences.

En revanche, les autorités françaises font part de leur opposition aux propositions de compromis suivantes:

- Article 12(4) (ligne 211): La proposition de compromis porte sur le pourcentage de financement des équipements et sur le choix de mettre la priorité sur la limite de 50% pour les équipements standards, ou de ne pas avoir de plafond s'agissant du financement des systèmes d'information.

Les autorités françaises sont défavorables à l'alternative proposée et rappelle que la question d'un plafonnement à 50% pour le financement d'équipements est une question qui a largement fait consensus lors de l'obtention de l'orientation générale partielle. De même, l'exclusion des SI de ce plafonnement est un objectif qui doit être absolument poursuivi dans la mesure où de grands enjeux comme la mise en œuvre de l'interopérabilité des SI devront être financés en particulier via le FSI. Aussi les autorités françaises demandent à la Présidence, en vue des trilogues techniques de poursuivre ces deux finalités conjointement. Il en va de l'efficacité du texte et de sa plus-value en matière de sécurité pour l'Union.

- Amendements par la COM des articles 12 (2) et 12 (2a): Les autorités françaises sont défavorables à une association obligatoire des agences par les États membres lors de la mise en œuvre des programmes nationaux. Il n'appartient pas aux agences d'intervenir dans la politique de sécurité intérieure des États membres, qui restent seuls décideurs de l'élaboration de leurs programmes nationaux.

- En ce qui concerne les services de renseignement, les autorités françaises rappellent à nouveau que les actions en lien avec le renseignement sont des prérogatives nationales (conformément à l'article 4 du TUE). En outre, soumis notamment au principe du tiers service, l'évolution de structures existantes comme le niveau de coopération et d'échange entre services, ne doivent pas être évoqués dans ce cadre. Cette position constitue une ligne rouge absolue.

Par ailleurs, le FSI a, avant tout, vocation à financer des projets relevant de la coopération policière et judiciaire. Ainsi, les autorités françaises demandent que les **précédents amendements du Parlement soient retirés** (lignes 31, 45 et 104), **rejettent la définition d'«autorités compétentes» telle que proposée**, et insistent pour que **le renseignement ne soit pas évoqué dans le considérant 31**. Une telle mention de ces services de renseignement serait particulièrement problématique sur le plan de la gestion du fonds et de sa mise en œuvre: les exigences de confidentialité de ces services s'opposent à l'exigence de transparence de la gestion des fonds structurels et les autorités de gestion des programmes nationaux ne pourront donc pas respecter la piste d'audit lorsque ces services seront bénéficiaires, voire public cible. Les autorités françaises sont **donc opposées à toute ouverture en leur direction**.

- Annexe VIII (ligne 533): Sur la question de savoir si les États membres peuvent convenir d'utiliser le terme «valeur» au lieu de «quantité» de drogues illicites saisies ou de faire rapport sur les «quantités» de plusieurs drogues illicites importantes au titre de cette annexe, les autorités françaises sont défavorables à une référence à la valeur des saisies. Le prix d'un produit stupéfiant dépend de plusieurs éléments (pureté, état du marché local...). Par conséquent, un tel indicateur n'est pas fiable. Nous soutenons que l'indicateur doit porter sur les quantités et pour rappel, c'est d'ailleurs l'indicateur utilisé par l'OEDT.

HUNGARY

Line 76-77

HU can agree with the proposal.

Line 211

HU is on the opinion that the limitation of the ICT, equipment and infrastructure is not necessary and not justified. There is neither a similar restriction in BMVI, nor the historic data of the current Hungarian National Programme supports setting such artificial barrier against the implementation.

Besides, in the past year HU has worked on drafting the National Programme 2021-2027 and analysed the prospective need. The conclusion is that over 100% of the tentative allocation could be spent on such interventions (ICT, equipment, infrastructure), therefore the deletion of the limit is proposed. In the sake of compromise HU is willing to accept 50% or apply the 50% only for procuring equipment (excluding infrastructure and ICT).

Lines 458-461

HU can agree with the proposal.

Lines 504, 528

HU can agree with the proposal.

Line 533

HU can accept both “quantity of drugs” or “value of drugs”.

However, HU does not support to further widen the list of indicators that has already been agreed upon; the list could never be exhausting and new and new results, needs and ideas may emerge. This would open another fierce debate resulting in further delays, therefore HU opines that “quality of weapons” and “seizures of wildlife/cultural goods” shall not be added to Annex VIII.

New COM compromised proposals:

Article 2

HU can agree with the proposal.

Regarding Recital (31) **line 45** HU can agree with the proposal, if the adjective “junior” is deleted (“junior law enforcement officer”). Such category would be difficult to standardise throughout the EU and it is believed that senior officers may also require exchange programmes related to the topic of discrimination.

Article 3

line 99, 102-103

HU can agree with the proposal.

Article 12 (line 208-210)

HU can accept the proposal, but reiterates that the method of consultation/association/coordination with the agencies and other relevant actors is not elaborated and further delays of the adaptation and implementation of the programmes shall be avoided.

Article 15

HU can agree with the proposal.

IRELAND

As we have repeatedly highlighted the issue of co-operation with third countries remains very important for Ireland. Our position is that flexibility must be preserved in this aspect of the fund. This point was also raised by NL during our last meeting and we fully support their intervention. We cannot accept that limits would be applied to this aspect of the fund.

ITALY

1. 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?

We support Council proposal (JHA Council on 7 June 2019) (10137/19); otherwise, our main priority would be keeping the reference of no limit for ICT (*"This ceiling shall not apply to ICT equipment"*)

2. Annex VI (lines **458-461**): whether the Member States, as part of a compromise, could accept the original COM proposal?

In line with current programming period, we continue supporting Council position -in favour of reducing TA codes to a single one- rather than COM proposal.

3. Annex VIII (lines **504, 528**): whether the Member States, as part of a compromise, could agree to withdraw the Council position?

As per line 504, indicator "*Number of transport means purchased*" can be cancelled. For line 528, instead, we believe it would be better to keep indicator "*Number of ICT systems/functionalities/services developed/maintained/upgraded*"

1. 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 can agree on adding some of the above-mentioned additions as long as MSs will be able to select indicators most suitable to the contents of their NPs

We would also like your feedback on the Commission compromise draftings which are found in Annex II to the present document. Line 208– We suggest using "*consulted during the development of the programmes at an early stage*" rather than "*associated to the development of the programmes at an early stage*"

NETHELANDS

- Article 1(2) (a) (b): NL can agree with the Council Legal Service proposal in line 76 and the EP position in line 77.
- Article 12(4) (line 211): The NL would like to preserve no limit for ICT equipment. We would like to preserve at least 30% for the purchase of equipment, means of transport or the construction of security-relevant facilities. We also have a practical question concerning equipment: under which category of equipment do virtual reality googles/glasses fall?
- Annex VI (lines 458-461): the NL can not accept the original COM proposal. The NL agrees with the aim of simplification and reducing the administrative burden concerning the way in which the technical assistance has to be reported in the CPR. In our opinion the CPR does not ask for a subdivision in the reporting of the actual costs incurred. The AMF, BMVI and ISF Regulations are supposed to align with the CPR and therefore should not include the reporting categories mentioned in the original ISF COM proposal.
- Annex VIII (lines 504, 528): NL can agree to withdraw the Council position.
- Annex VIII (line 533): NL can agree.
- Annex VIII (line 533): NL does not see the need for adding these indicators but can agree.
- Annex II article II: 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. The definition seems to exclude other eligible competent authorities from ISF funding, e.g. competent authorities that operate regarding terrorist content online. Is this the case? If so, NL can not support the adding of/wording of this definition.

The addition relates to the discussion we had about the inclusion of intelligence services. The suggested changes are highlighted in yellow. The deletion of 'such as the Counter Terrorism Group (CTG)' and 'including intelligence services' does not mean they cannot longer be involved, but makes the text more in line with the Treaty. I hope you can take the changes on board otherwise we are not able to support the text as it stands now.

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.

POLAND

- **Article 12(4)**

Poland strongly supports the compromise version of the proposal to increase the limit on the allocation of funds for the purchase of equipment, means of transport, etc. to 50% in Article 12 point 4. We also support the exclusion of ICT equipment from this limit. Such decisions will, without a shadow of a doubt, increase the equipment and infrastructure capacity of the Member States', which should definitely improve their internal security. This is particularly important for the Member States that are still improving their equipment, infrastructure, operational capacities of national services and institutions responsible for maintaining internal security, also in collaboration with other Member States.

Projects should bring long-lasting effects, which will constitute an enhancement a Member State's security also after a given project has been completed. As the previous experience shows, ISF's undertakings will mainly concern the purchase of equipment, infrastructure (including IT infrastructure), because such activities guarantee a permanent increase in security level. The introduction of a 15% limitation on such activities would indispose the Fund to respond to the key needs of services in this area. "Soft" activities, meetings, exchange of information are important, but without proper facilities and modern technology, they may not be effective enough. Successful actions in the area of EU security require substantial resources and capabilities from the Member States.

However, if it is necessary to choose one of the above proposals, PL is in favour of setting a limit of 50% and resignation from the provisions regarding ICT equipment.

- **Line 134:**

PL has reservations about the return of the provisions on "*standard equipment*". There is a risk that the European Commission considers parts of projects that will receive funding ineligible due to imprecise provisions about the inability to purchase "standard" devices, means of transport or equipment. The security domains are often highly specialized, and it is controversial to determine whether the equipment they use is "standard" or "innovative". The main criterion for the purchase of devices / means of transport / instruments should be their effectiveness in solving problems related to ensuring safety, not an assessment of whether they are above-standard.

Moreover, this provision does not specify how to understand the phrase "standard devices or standard instruments". The meaning of these terms should be clarified so that in the future there are no doubts as to the legitimacy of purchasing the given devices, equipment and accessories under this programme. The above provision may significantly limit the possibilities of using the above-mentioned fund resources for possible purchases of equipment and fittings.

We propose to delete the point regarding the ineligibility of activities involving the purchase and maintenance of standard equipment, since it enables us to avoid the need to justify every single purchase (especially that there is no definition of the "*standard equipment*"). PL is not in favour of purchasing *standard equipment* from the fund, but points out the imprecision of the record. For example: does the purchase of mobile portable terminals fit into the category of *standard equipment* that does not meet the eligibility criteria?

- **Annex VI, line 458-461**

Even though we believe that the proposal is too detailed and may hamper the reporting process, in order to reach a compromise, PL may accept the original EC proposal.

- **Annex VIII, line 504 and 528**

In order to reach a compromise, PL may accept the removal of the proposed indicators from specific objective 1 (regarding 504) and specific objective 2 (regarding 528). Provided that the same indicators will remain for the remaining specific objectives.

- **Annex VIII, line 533 - „value of confiscated illicit drugs ...”**

The value of illicit drug seizures is debatable and sometimes impossible to estimate. The very estimation may vary depending on the market or the country; and the chemical composition (i.e. purity) of the substance – even more so, given the fact that the indicators will be assessed by the beneficiaries themselves. It would be much more precise to replace the criterion of value with a quantity one (in line with the compromise proposal).

PL does not see the need to break down this indicator in more detail into other type of products - it would make it difficult for MS to report them.

ROMANIA

Annex I to WK9105

- Lines 76 and 77 - RO can support the proposals of the Legal Service Council and the EP respectively.
- Line 211 - RO supports maintaining the 50% percentage and excluding ICT from this limit, according to the PGA. Between the two aspects, the main priority of the RO would be to maintain the elimination of the percentage limitation for ICT, as most measures to implement the objective of the fund, in particular the exchange of information, which cannot be achieved without ICT tools, applications and equipment, and the investment effort is significant.
- RO could accept the reduction of the percentage for equipment to 40% - red line.
- Line 131 2b) - RO does not support the introduction of minimum or maximum limits on the allocation of funds on certain objectives / actions, as it limits the flexibility of the fund, which may have a negative effect in the event of security crises.
- Line 131 2a) - RO supports PGA (red line). RO does not agree with the ineligibility of standard equipment / infrastructure / means of transport, as it will cause syncope in the operation of systems and the performance of activities that directly contribute to the objectives of the funds, for example (1) maintenance of standard equipment is required to ensure the functioning of European IT systems. (router, PC, etc.) and (2) standard equipment (tablets, PCs, etc.) is required for the development / testing of innovative equipment / applications.
- Annex VI (lines 458-461): in the spirit of compromise, RO can accept the initial proposal of the COM.
- Annex III (lines 504, 528): EN supports the Council's position (PGA) until it receives clarifications / explanations on redundancy.
- Annex VIII (line 533): In the spirit of compromise, RO can support the EP's proposal to replace "quantity" with "value" of confiscated drugs. RO does not agree with the additional detailing in sub-indicators (types of drugs)
- Annex VIII (line 533): RO does not support the addition of new sub-indicators as it will make implementation and reporting more difficult.

Annex II to WK9105

- Art. 2 - Definitions / line 88 and new, recital - In the spirit of compromise, RO can support the compromise proposals of COM.
- Art. 3 - line 99 - In the spirit of compromise, RO can support the compromise proposal of COM.
- Art. 3 - line 102 - RO can support the COM compromise proposal, without eliminating the phrase all forms of crime, in particular to.
- Art. 3 - line 103 - RO can support the COM compromise proposal.
- Art. 12 - lines 208 - RO may support the COM compromise proposal, provided that the verb to consult is retained, as in the PGA.
- Art. 12 - lines 209 and 210 - RO can support the COM compromise proposal.
- Art. 15 - lines 234 and 235 (Annex II) - RO can support the COM compromise proposal.

Annex III to WK9105

- Regarding the proposals on the references to the intelligence services / intelligence community, respectively Counter Terrorism Group (CTG), RO supports their elimination from the Regulation. RO agree with the Council point of view that the matter of “intelligence” is a difficult issue.

SPAIN

REASONING AND PROPOSAL	SPANISH COMMENT
Article 1 (2) (a) (b), lines 76 and 77	Spain can accept CNS suggestion and EP position in line 77.
Lines 131 and 134	Spain cannot accept EP position on limiting to a percentage the amount of funds allocated under a National Programme in relation to a third country. Spain prefers assuring a broad flexibility in regards to its National Programme without any fund limitation. Moreover, EP amendment goes against the position established in several European Council Conclusions; such as the ones of June 28 th 2018 where the Council underlined the need for flexible instruments, allowing for fast disbursement, to combat illegal migration.
Article 12 (4) – Line 211	The Kingdom of Spain supports Council position on this matter. Furthermore, we would like to exclude ICT costs from this limit.
Annex VI – Lines 458 until 461	The Kingdom of Spain supports Council proposal due to the complexity of informing EC.
Annex VIII – Lines 504 and 528	Spain can accept the withdrawal of Council proposal if the new indicators are withdraw subsequently in Annex VIII
Annex VIII – Line 533	Spain prefers maintaining “quantity” criteria in line with our national statistics. In the case that “price” criteria is accepted as a 29 compromise, we ask that a EU Agency to establish subsequent price per unit in order to unify criteria among Member States.
Annex VIII – Line 533	Spain cannot support adding new indicators related to “ <i>quantity of weapons seized in the context of cross-border joint operation by type of weapon</i> ” / “ <i>Number of cross-border joint operations in which wildlife were seized</i> ” / “ <i>Number f cross-border joint operations in which cultural goods were seized</i> ”.
Annex II – Article 2 (g), Line 88	Spain can accept COM definition proposal
NEW line	Spain proposes based on COM definition the following drafting alternative: (x) ‘Competent authorities’ means all Member States’ central 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 – Union Actions, Line 45	Spain is of the opinion that the recital at stake should be redrafted due to the fact that a clearer differentiation has to be made when talking on, on a one hand, intelligence cooperation related to terrorism and radicalization related to it and, on another hand, intelligence cooperation related to racism violence and radicalization related to it. From our understanding, this clarification is needed because the subsequent projects or working methodology differs from one to another.

Article 3 – Line 99	Spain can accept COM compromise and, if this compromise drafting is finally included, we would request the inclusion in Article 2 a wide definition of “ <i>security related incidents, risks and crises</i> ”. As a possibility, maybe we could reuse definition given in Article 2 (f) of ISF 513/2014 Regulation.
Line 102	Spain can accept COM compromise drafting.
Line 103	Spain can accept COM compromise drafting and, if it is finally included in the text, we would request the inclusion in Article 2 a wide definition of “ <i>security related incidents, risks and crises</i> ”. As a possibility, maybe we could reuse definition given in Article 2 (f) of ISF 513/2014 Regulation.
Article 12 (b) – Line 208	Spain can accept COM compromise drafting.
Line 209	Spain can accept COM compromise drafting but, nevertheless, we consider that a further clarifying drafting is needed. More into details, according to CPR proposal the Managing Authority –according to Spanish point of view- would be the Ministry of Treasury. For this reason, and given the ISF action scope and management, we consider necessary to clarify that the Managing Authority would be the competent Ministry/Department (i.e. Ministry of Interior in the case of Spain). This proposal aims avoiding any duplicity and/or unnecessary misunderstanding when applying jointly CPR and ISF future regulations for the period 2021-2027.
Line 210	Spain can accept COM compromise drafting.
Article 15 – Operating support; line 234 and 235	Spain is of the opinion that it would be more suitable to use the terms “actions” or “eligible actions”.

SWEDEN

Line 76 and 77

OK for SE.

Line 211

SE is still reluctant to exceed the 15%. In case a majority of Member States can accept it, we will however not block 50% as a final compromise.

Line 458-461

OK for SE.

Line 504, 528

OK for us.

Line 533

Drugs should be reported in quantities only. Report of value makes no sense, since prices vary a lot. Reporting of seized firearms is OK for SE, but reporting of other types of seized goods will have little benefit but will add a burden to Law Enforcement agencies.

Annex II and III

SE can be flexible to the solutions proposed.
