

The migration, borders and security cluster of the 2021-2027 MFF

Impact assessment (SWD(2018) 347, SWD(2018) 348 (summary)) accompanying Commission proposals for regulations of the European Parliament and of the Council establishing i) the Asylum and Migration Fund ([COM\(2018\) 471](#)), ii) the Internal Security Fund ([COM\(2018\) 472](#)), iii), as part of the Integrated Border Management Fund, the instrument for financial support for border management and visa ([COM\(2018\) 473](#)), and iv), as part of the Integrated Border Management Fund, the instrument for financial support for customs control equipment ([COM\(2018\) 474](#)).

This note is one of a series of brief initial appraisals of European Commission impact assessments (IA) accompanying the MFF proposals, tailored to reflect the specificities of the MFF package and the corresponding IAs.¹ It provides an initial analysis of the strengths and weaknesses of the European Commission's [impact assessment](#) (IA) accompanying the above-mentioned proposals, submitted on 12 June 2018 and referred to (with regard to proposals i, ii and iii) Parliament's Committee on Civil Liberties, Justice and Home Affairs (LIBE) and (with regard to proposal iv) Parliament's Committee on Internal Market and Consumer Protection (IMCO).

Political and legal context; objectives

Within the context of the multiannual financial framework (MFF) for the 2021-2027 period, the Commission is proposing a cluster of four instruments under three funds that would deal with migration borders and security: the Asylum and Migration Fund, the Internal Security Fund and the Integrated Border Management Fund, of which the last has a border management and visa component and a customs control equipment component. These are proposed to succeed the two key EU funds addressing migration and security in the 2014-2020 programming period: the Asylum, Migration and Integration Fund (AMIF) and the Internal Security Fund (ISF). The actions proposed under the MFF follow policy and legislative initiatives undertaken further to the adoption of the European [Agenda on Migration](#)² and the European [Agenda for Security](#).³⁴

Drawing on the findings of the interim evaluation of the funds in operation during the 2014-2020 programming period, the ex-post evaluations of the relevant funds in operation during the 2007-2013 programming period, and stakeholder consultation activities, the IA identifies four main collective challenges that need to be addressed by the post-2020 funds and instruments they cover: i) making the management of the funds more flexible and easier to adapt to the constantly evolving challenges in the areas of migration, border management and security; ii) further simplifying the rules for the implementation of the funds; iii) ensuring coherence and synergies between actions supported by EU funding instruments; and iv) ensuring that the funds achieve the highest level of EU added value by improving the monitoring and evaluation framework to support a strengthened performance-based management.

The IA sets separate general and specific objectives for each of the funds and instruments and, although it does not set operational objectives as such, Annex 5 provides a number of implementation measures for each of the specific objectives, which are more akin to operational objectives. It would appear that while the objectives and accompanying implementation measures are achievable and relevant to the challenges identified and while the proposals set timeframes for the application of their provisions, the objectives and implementation measures do not appear to achieve the level of specificity and measurability intended in [tool 16](#) of the Commission's better regulation toolbox.

Programme structure and priorities; delivery mechanisms of the intended funding

The IA explains that the adoption of four separate instruments is necessitated by the restrictions engendered by the provisions of the Treaty on the Functioning of the European Union that apply to the home affairs area, in particular different voting rules in the Council stemming from variable geometry with regard to the Schengen acquis and the area of freedom, security and justice. It discusses the priorities and actions supported by the instruments in relatively broad terms. The scope of intervention of the proposed Asylum and Migration Fund is similar to that of the AMIF in the 2014-2020 programming period with minor adaptations to the priorities and actions. Likewise, the objectives of the proposed Border Management and Visa Instrument of the Integrated Border Management Fund are based on the scope of the border and visa component of the ISF, while those of the proposed Internal Security Fund are based on the police component of the ISF. The proposed Customs Control Equipment Instrument of the Integrated Border Management Fund is a new instrument intended to fill a void in the 2014-2020 programming period, since the current 'Customs programme (which will be renewed) does not provide means to fund customs detection and control equipment and this void is only marginally filled by other instruments.

According to the IA, the delivery mechanisms of the proposed instruments seek to improve the current instruments by enhancing their flexibility and performance, and simplifying implementation of the funds.

Budgetary or public finance implications

The proposed financial envelope for the implementation of the Asylum and Migration Fund is €10 415 billion and that for the implementation of the Internal Security Fund is €2.5 billion. The proposed budget for the Integrated Border Management Fund is €9 318 billion, divided into €8 018 billion for the implementation of the instrument for financial support for border management and visa, and €1.3 billion for the implementation of the instrument for financial support for customs control equipment. All amounts are expressed in current prices. In comparison, Annex 3 of the IA states that for the 2014-2020 programming period, the AMIF and the ISF together had an initial budget of €6 901 billion, which reached €10 788 billion in response to migratory and security crises.

Relations with third countries

One of the specific objectives of the proposed Asylum and Migration Fund involves assuring the sustainability of the return and the effective readmission of irregular migrants in third countries. Indeed, under this fund the IA envisages 'support actions in third countries including on infrastructure, equipment and other measures provided these contribute to effective cooperation between third countries and the EU and its Member States on return and readmission' (IA, p. 21). Likewise, under the proposed Internal Security Fund and the Border Management and Visa Instrument, the IA contemplates cooperation with third countries and support for their capacity-building. The IA, however, does not offer any significant analysis in respect of relations with third countries, even if such an analysis might have been relevant in this context.

Simplification and other regulatory implications

Although the interim evaluations of the AMIF and the ISF have shown some progress with regard to simplification, 'the administrative burden is still perceived to be too high by both managing authorities and beneficiaries' (IA, p. 12). In the open public consultation on EU funds in the area of migration (see below), 66 % of respondents expressed the view that the complexity of the rules and a high administrative burden prevent, to a large or fairly large extent, the current programmes and funds from meeting their objectives. As indicated above, the IA identifies simplification of the rules for the implementation of the funds as one of the four main challenges that need to be addressed, and the ways to address this challenge are considered in some detail in Section 4.2 of the IA. Section 3.3 of the IA discusses the coherence and complementarities of the proposed instruments with other EU funding instruments.

Subsidiarity / proportionality

In terms of subsidiarity, the IA states that 'the challenges in the areas of asylum, migration, the management of the external borders, the prevention of and fight against serious and organised crime, terrorism and other security-related risks are by their nature interlinked, transnational phenomena and cannot be adequately

addressed by the Member States acting alone' (IA, p. 19). In respect of customs controls, the IA identifies imbalances at the EU's external borders, which cannot be addressed by Member States acting individually.

Proportionality is briefly discussed in the explanatory memoranda of the proposals, all affirming that the respective proposal does not go beyond what is necessary to achieve its objectives.

The deadline for submission of reasoned opinions by national parliaments with regard to respect of the principle of subsidiarity was 24 September 2018 for all proposals; no national parliament had issued a reasoned opinion by that date.

Quality of data, research and analysis

The IA makes predominantly qualitative considerations with the inclusion of some statistics to illustrate the political and legal context. It draws on the ex-post evaluation of the Home Affairs Funds in operation during the 2007-2013 programming period and the interim evaluations of the AMIF and the ISF in operation during the 2014-2020 programming period. Annex I of the IA mentions that the analysis is also based, amongst other things, on a study by an external consultant. It however does not make either a reference to this study or give any further details about it.

The IA presents policy options with regard to certain choices made in the proposals in respect of the architecture of the funds and the delivery mechanisms. It however does take certain liberties with regard to the accepted methodology and format outlined in the Commission's better regulation [guidelines](#) and better regulation [toolbox](#), when identifying the options, analysing their impacts and comparing them to choose the preferred option. The IA presents two options for every choice to be made: an option labelled the 'preferred option' and another labelled the 'alternative option', with some justification as to why the former is preferred and the latter is not, but not such as to constitute an analysis of the impacts as required in the Commission's better regulation guidelines.

Stakeholder consultation

The Commission conducted six online public [consultations](#) for the MFF proposals, clustered by policy areas, rather than carrying out one online public consultation for each accompanying IA as is normally required by the better regulation guidelines. Instead of the mandatory 12-week duration, these six public consultations ran for eight weeks, from 10 January 2018 to 9 March 2018. Three of these open public consultations are relevant for the purposes of the IA to some extent.

The public consultation on EU funds in the area of [migration](#) received 350 responses. These indicated that the three most important policy challenges that programmes and funds under this policy area could address are: 'ensuring solidarity with Member States facing the greatest migration pressure' (with 79.2 % of respondents considering it at least rather important); 'supporting the work of Member States to accept and integrate migrants into their society' (71.2 %); and, 'strengthening and developing the Common European Asylum System' (70.3 %).

The public consultation on EU funds in the area of [security](#) received 153 responses. According to the respondents, the most important policy challenge that programmes and funds under this policy area could address is 'fighting cross-border crime, including terrorism, with more cooperation between law enforcement authorities', with 73.2 % considering it very important.

The public consultation on EU funds in the area of [investment](#), research & innovation, SMEs and single market, which covers customs issues amongst other things, is relevant for the purposes of the proposed new instrument for financial support for customs control equipment.

In line with the better regulation guidelines, a dedicated section (section 1.2.2 'Consultation activities') and Annex 2 of the IA give a round-up of all the consultation activities undertaken to gather stakeholder feedback that would subsequently be considered in the design of the new funds and instruments. The views of stakeholders appear to have been reflected in the IA.

Monitoring and evaluation

One of the main challenges (mentioned above) identified by the IA within its scope of coverage is that of achieving the highest level of EU added value with a focus on performance. According to the IA, this would

require 'improving the monitoring and evaluation framework in a way which also supports a strengthened performance based management' (IA, p. 18). Monitoring and evaluation are discussed in some detail in Section 5 of the IA where, amongst other things, it identifies a number of core performance indicators and the respective data sources for each of the funds and instruments. These indicators and data sources are largely reflected in annexes to the proposals. The proposals include provisions covering the monitoring, reporting and evaluation of each of the specific funds or instruments.

Commission Regulatory Scrutiny Board

The Regulatory Scrutiny Board issued a positive opinion on the draft IA on 13 April 2018, with a recommendation to improve the IA with regard to certain aspects. As required by the better regulation guidelines, Annex 1 to the IA explains how the RSB's comments were addressed, and it seems that the changes made go some way towards addressing the Board's considerations and recommendations.

Coherence between the Commission's legislative proposal and IA

The proposals appear to be coherent with the 'preferred options' indicated in the IA.

Conclusions

In setting the context of the IA, the RSB in its opinion on the IA explains that on account of proportionality, the IA template has been adjusted to focus 'on those changes and policy choices that the MFF proposal leaves open'. However, while the IA does set out the rationale for the new instruments and explain the choices made in their design to some extent, it would appear that the level of analysis conducted and the measure of the departure from the standard methodology and format of impact assessments (set in the Commission's better regulation guidelines) weaken its potential to inform decision-making.

ENDNOTES

¹ The almost parallel adoption of the spending programmes and the MFF proposals had an impact on the IA process and resulted in simplified IAs, with their format and scope differing from the standard IAs as defined by the Commission's better regulation guidelines (see also [Toolbox 10. Financial Programmes and Instruments](#)).

² Communication on a European agenda on migration, COM(2015) 240, European Commission, 2015.

³ Communication on a European agenda on security, COM(2015) 185, European Commission, 2015.

⁴ For more information on recent developments in the area of asylum, external borders and external cooperation, see Atanassov N. and Radjenovic A., [EU asylum, borders and external cooperation on migration: Recent developments](#), EPRS, European Parliament, September 2018.

This briefing, prepared for the Committee on Civil Liberties, Justice and Home Affairs (LIBE) and for Committee on Internal Market and Consumer Protection (IMCO) analyses whether the principal criteria laid down in the Commission's own Better Regulation Guidelines, as well as additional factors identified by the Parliament in its Impact Assessment Handbook, appear to be met by the IA. It does not attempt to deal with the substance of the proposal.

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