“TH€ WAY FORWARD”

A reflection paper on the new proposals for EU funds on Asylum, Migration and Integration 2021-2027

INTRODUCTION

The Multiannual Financial Framework (MFF) of the European Union (EU) is the framework that regulates implementation of the EU budget for seven-year periods. The current MFF regulates the period 2014-20. During May-June 2018, the European Commission (EC) published its budget and legislative proposals for spending programmes for 2021-27.

This reflection paper addresses those proposals of most relevance to beneficiaries of the current Asylum Migration & Integration Fund (AMIF) 2014-20, and that are proposed to be implemented by Member States via 'shared management' arrangements (National Programmes). It concentrates mainly on the proposed Asylum & Migration Fund (AMF) and European Social Fund+ (ESF+).

This reflection paper does not provide a complete analysis of the new proposals, but rather identifies key risks and potential mitigating actions in selected areas of interest and concern. It can be read in conjunction with the study "The Way Forward" – A Comprehensive Study of the new Proposals for EU funds on Asylum, Migration and Integration", published by the strategic partnership of the European Council for Refugees and Exiles (ECRE) and the UN Refugee Agency (UNHCR).

This reflection paper was authored by Rachel Westerby, independent researcher and writer on migration, asylum and integration. It was commissioned by the strategic partnership of the European Council for Refugees and Exiles (ECRE) and the UN Refugee Agency (UNHCR). The views it contains do not necessarily reflect those of either ECRE or UNHCR.

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1. INTEGRATION

What is proposed?

The new proposals reconfigure EU funding for integration for third-country nationals. AMF support is restricted to reception and integration measures *'generally implemented in the early stage of integration in the period after arrival on EU territory'*, while the ESF+ becomes the main EU funding vehicle for medium and long-term integration.[1]

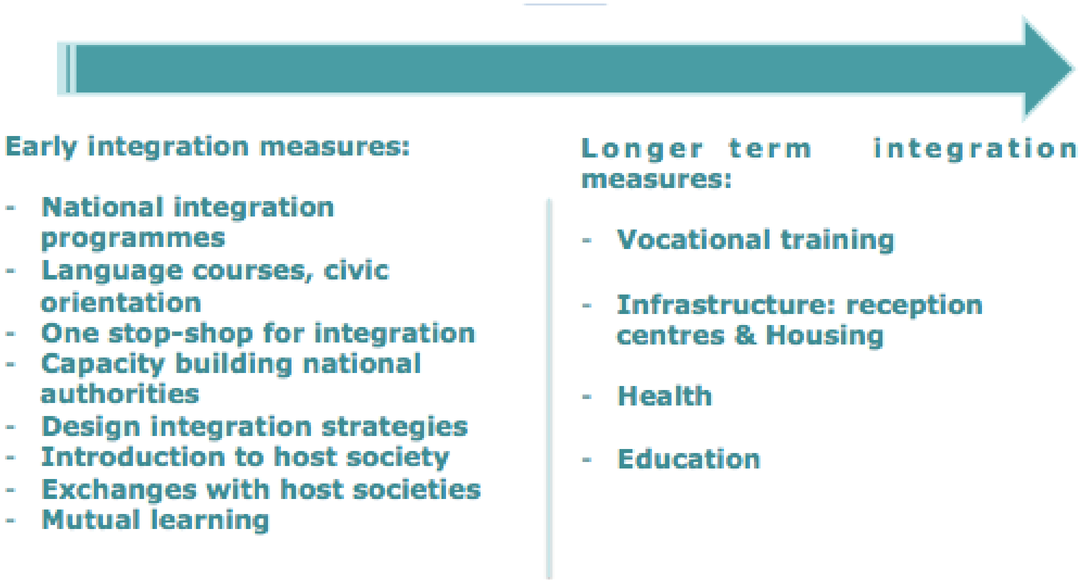

Figure 1.1: *Extract from EC presentation at 'Refugee protection and forced displacement in the EU post-2020 Multiannual Financial Framework (MFF)' (June 18 2018, Brussels)*

What are the risks?

i. A gap in funding support for medium-long term integration

The extent to which Member States prioritise longer term integration for third-country nationals differs widely. While the ESF+ introduces a new Specific Objective to promote socioeconomic integration for third-country nationals (and other minority groups), it does not ringfence resources specifically for this objective. Member States must instead allocate 25% of national ESF+ resources to the '*social inclusion policy area*', in which the socioeconomic integration objective sits alongside four other of the Fund's Specific Objectives.

Member States for whom migrant integration is not a policy priority would therefore be free to allocate minimal resources to this area, and concentrate funding support on other social inclusion activities. Given that the AMF will support early integration measures only, there is therefore a risk that EU funding support for medium and longer term migrant integration will be substantially reduced in some national contexts[2].

[1] Support for horizontal measures addressing capacity-building and host societies is provided by the AMF.
[2] An account of mainstreaming of immigrant integration measures by Member States and the contribution of EU Structural Funds (including the European Social Fund) in this area to date can be found in Wofflhardt, A. (2018) 'ReSoma Discussion Brief: Sustaining mainstreaming of immigrant integration'.

ii. Reduced EU funding support for medium-long term integration

In the current AMIF and proposed AMF, the general Union co-financing contribution for actions supported by the Funds is set at a maximum of 75%.[3] For the proposed ESF+, maximum rates of co-financing are set per each of the three types of region used to calculate global funding allocations to Member States, as below:

- Less developed regions: 70%
- Transition regions: 55%
- More developed regions: 40%

Final co-financing arrangements are agreed per *individual* Member State national programmes.

Given the transfer of medium-long term integration to the ESF+, the above co-financing rates represent a substantial reduction in EU funding support for this area when compared to the current AMIF. This reduction is particularly substantial for regions classified as 'transition' (reduction of 20%) and 'more developed' (reduction of 35%).

Lowered co-financing rates and the subsequent need for increased Member State/external investment is likely to negatively affect the overall take-up of ESF+ resources at national level. This impact may be more acute for actions related to integration and social inclusion, which by their nature provide less immediately tangible outcomes for Member State investment than measures to - for example - assist target beneficiaries close to the labour market to move into employment.

iii. Inefficient implementation

Measures to support integration take place across number of different domains, and the same type of integration action can often be implemented in both and short and longer term settings. Implemented in isolation, and particularly in national contexts without well-established national integration strategies, integration actions supported by the proposed AMF and ESF+ could duplicate one another and thus reduce the impact of EU funding support. For target beneficiaries, a lack of coordinated implementation could work against establishing clear pathways through the different types of integration support resourced by the two Funds.

How can the risks be mitigated?

i. Ringfenced funding for migrant integration in the ESF+

Although the current ESF can support integration measures for third-country nationals, the wholesale transfer of medium to long-term integration to the ESF+ is a new provision that - at least in the short term - merits a structural approach to resourcing that ensures gaps in funding do not occur. Member States are required to allocate a substantial amount of national ESF+ resources (25%) to the social inclusion policy area, from which it would be feasible to mandate a minimum allocation to integration.

This type of minimum allocation would not require Member States to implement actions solely for the benefit of third-country nationals, an approach that would work contrary to mainstreaming and inclusion approaches, but rather evidence the participation of third-country nationals to a level equivalent to the required minimum allocation.

ii. Aligned co-financing provisions for integration

To provide continuation in EU funding support for medium-long term integration, the new proposals would usefully provide for some level of parity in co-financing provisions for integration actions between the proposed AMF and ESF+. This could be achieved by agreeing higher co-financing rates for integration-related actions with individual Member State, in the course of agreeing overall co-financing arrangements for their individual national programmes.

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[3] *The AMF introduces a higher maximum contribution of 90% for a defined list of actions, including integration measures implemented by local/regional authorities and civil society organisations, discussed in ''Access to funding for civil society organisations and local authorities', below.*

iii. Policy cooperation between Fund-specific management and control systems

While the new proposals allow for bodies designated as national Managing Authorities to be responsible for more than one shared management Fund, the extent to which this joint management possibility is taken up is a decision for Member States. The EC might usefully provide additional guidance or recommendations for Member States, both on designating joint Managing Authorities and ensuring cooperation between them on cross-cutting policy issues such as integration.

iv. National Integration Monitoring Committees

Member States must establish one national Monitoring Committee per Fund, to supervise and assess the performance of each National Programme and approve various aspects of its implementation. Monitoring Committee members should be drawn from the urban and other public authorities, civil society organisations, community and voluntary organisations and social partners who can most influence and/or be affected by the implementation of the National Programme in question.

Again in view of the new provisions for integration, national implementation of the proposed AMF and ESF+ would benefit from the establishment of cross-Fund national Integration Monitoring Committees. These bodies would assume an advisory and oversight role in relation to migrant integration in the AMF and ESF+, by:

- Reviewing planned Calls for Proposals for both Funds, with a particular focus on ensuring the efficient implementation of EU funds (including through joint AMF/ESF+ actions, where appropriate).
- Identifying unmet migrant integration needs that could be addressed via AMF and/or ESF+ National Programmes.
- Providing advisory recommendations on project selection, where migrant integration the/an objective of a Call for Proposal.
- Providing input into performance reviews, reporting and evaluations of the AMF and ESF+.

The Integration Monitoring Committee would be represented in the membership of the AMF and ESF+ Monitoring Committees, and carry out the above role in collaboration with Fund-specific national Managing Authorities. As provided for Fund-specific Monitoring Committees, all data and information provided to Integration Monitoring Committees would be made public.

v. Common indicators for integration across the AMF and ESF+

Integration actions proposed to be supported by the AMF and ESF+ are intended to address the same groups of beneficiaries along the continuum of their residence in Member States. Monitoring the performance and impact of the Funds in this area may therefore be better achieved through the use of common performance indicators for integration, rather than the Fund-specific arrangements included in the current proposals.

The use of short and long term result indicators is proposed only for the ESF+, but would also be of value for AMF integration actions given that integration, as the EC acknowledges in the proposed AMF Regulation, is a *'long-term process'* in which the results of measures implemented at an early stage are not immediately visible. Cross-Fund common performance indicators for integration would therefore address the impact of early stage integration interventions supported by the AMF, alongside medium-long term actions implemented via the ESF+.

vi. Linking national integration implementation with European policy

The EC aims to link the implementation of shared management funds more closely with European policy, and the new proposals particularly emphasise strengthened links to the European Semester process and its associated Country Specific Recommendations.

The June 2016 *Action Plan on the Integration of Third-Country Nationals* sets out a number of recommendations for actions in key areas of integration at both European and national levels. It can provide a useful framework to assess the performance of the Funds in relation to integration at the European level, if national performance reporting and evaluation is explicitly linked to its provisions.

National Managing Authorities for the proposed AMF and ESF+ would usefully be required to provide mid-term and final evaluation reports addressing how far national implementation of the AMF and ESF+ has contributed to realising the aims of the Action Plan. Common performance indicators for integration could provide the basis for any such reporting, and national Integration Monitoring Committees could, if established, be tasked with producing these reports.

2. PROGRAMMING

What is proposed?

Member States must submit to the EC for approval the following programming documents, covering the period 2021-27:

- One **Partnership Agreement** for all shared management Funds, setting out overall policy objectives, indicative financial allocations and programme activities, and expected results.
- One **National Programme** for each shared management Fund, setting out programme priorities and objectives, targets and indicators, types of intervention, and indicative budgets.

Both documents are prepared using standard templates, which also require Member States to describe actions taken to involve relevant partners in the documents' preparation.

The EC assesses both documents based on their compliance with common and Fund-specific rules and Country Specific Recommendations. Partnership Agreements are intended to be strategic documents that guide programme design, and cannot be amended once approved. National Programmes must be consistent with the Partnership Agreement, and can be amended during implementation within specific budget transfer limits and with the EC's approval.

In a marked change from the current AMIF, the proposed AMF creates a new oversight role for the European Union Agency for Asylum (EUAA) and the European Border and Coast Guard Agency (Frontex) with regard to AMF National Programmes. The EC will specifically consult them on the consistency of planned national actions with the work of the agencies, and require recommendations arising from EUAA monitoring exercises to be implemented via AMF National Programmes.

What are the risks?

i. Limited assessment of national needs and challenges

Partnership Agreements form the strategic basis for national programming of all shared management Funds, and while Member States must justify the selection of particular policy objectives, there is no requirement to provide a standalone assessment of needs and challenges on which such justifications would be based. This contrasts markedly with the current AMIF, which requires programming to based on an assessment of needs present in Member States at a particular date, where possible supported by statistical data.

National Programmes are required to address challenges identified in Partnership Agreements. While it may be here possible to refer to any challenges included in Partnership Agreements by way of justification for selecting particular policy objectives, no overall assessment of national challenges exists on which to base national programming. The overall approach that Member States should use in this context therefore lacks clarity.

Neither the Partnership Agreement nor National Programme templates require Member States to draw on specific types of data or evidence to justify policy choices. Although this does not preclude evidence-based approaches by Member States, no specific guarantees are in place to ensure that politically motivated priority-setting does not take precedence in this context.

ii. Lack of transparency in decentralised agency involvement in national programming

The proposed AMF does not require the input of the decentralised agencies into AMF National Programmes, and any subsequent programme amendments, to be made public. Whilst the scope of the agencies' input is restricted to their areas of competence, the lack of opportunity for national Monitoring Committees and other relevant actors to scrutinise programme amendments in this context works contrary to the ability of national authorities and their partners to lead programme implementation.

iii. Reduced transparency in programme priority-setting

The current AMIF requires Member States and the EC to engage in a formal, high-level Policy Dialogue process to establish strategic priorities for national programming. The new proposals make no reference to an equivalent process, instead tasking Member States with preparing Partnership Agreements to be approved by the EC.

The absence of a formal Policy Dialogue process means current arrangements for transparency in national priority-setting, such as the AMIF requirement for the EC to share the general outcomes of Policy Dialogues with the European Parliament, are no longer present.

How can the risks be mitigated?

i. Structured needs assessments as a basis for programming

The standard Partnership Agreement template should be amended to require a standalone assessment of needs and challenges relevant to implementation of shared management Funds. Such an assessment should be presented in the form of a baseline situation in the Member State on a specific date, and include statistical and qualitative data from independent sources.[4]

EC approval of Partnership Agreements and National Programmes should include an assessment of how far selected policy priorities and programme objectives address the needs and challenges presented in the needs assessment.

ii. Enable scrutiny of decentralised agency programming inputs

The AMF should include a requirement for decentralised agency input into National Programmes to be scrutinised by national Monitoring Committees, and a process by which their input can be challenged if thought to extend beyond the their areas of competence. Any programme amendments resulting from the input of decentralised agencies should be presented to the Monitoring Committee for approval (as the AMF currently includes for programme amendments proposed by national authorities).

iii. Reinstate the formal Policy Dialogue process (Asylum & Migration Fund)

To ensure previous levels of transparency in priority-setting for asylum and migration funds continue, the formal, high-level Policy Dialogue process included in the current AMIF should be reinstated for the AMF, together with the requirement for the EC to report its outcomes to the European Parliament. The scrutiny role of the European Parliament in this context should be strengthened, including by specifying its relationship to the oversight of compliance with EU asylum law to be carried out by the proposed European Agency on Asylum.

3. DISTRIBUTION OF ASYLUM AND MIGRATION FUNDING TO MEMBER STATES

What is proposed?

The proposed AMF has a total financial envelope of €10.42bn, 60% (€6.25bn) of which is allocated to Member States via shared management. 83.3% (€5.21bn) of this amount is allocated to Member States at the start of the programming period: all receive a fixed amount of €5m (€0.13bn), and the remainder of the initial amount (€5.08bn) is allocated using a distribution key.

[4] *As recommended in ECRE & UNHCR (2018) 'Follow the Money: Assessing the use of Asylum, Migration & Integration Fund (AMIF) funding at the national level'*

The key first allocates specific shares of the €5.08bn to each of the three AMF priorities: 'countering irregular migration' (40%/€2.03bn), 'asylum' (30%/€1.52bn) and 'legal migration and integration (30%/€1.52bn). It then determines financial allocations for MS from each of these three amounts, calculated by weighing specific statistical information (Eurostat data for the preceding three years) for each Member State. No specific justification is provided in the new proposals for the higher weighting of 40% for the 'countering irregular migration' priority within the key's calculations.

The remaining 16.7% (€1.04bn) of AMF shared management funds is distributed to Member States in the context of a 2024 mid-term review, with allocations determined by a reapplication of the distribution key. Member States not submitting payment claims equivalent to 10% of the initial AMF allocation for 2021-24 at the mid-term review stage will not be eligible to receive further allocations.

What are the risks?

i. Distribution of funding does not map onto national capacities

When the distribution key set out in the proposed AMF is applied using data for the three years 2015-17, some significant differences can be noted in the distribution of AMF funding to Member States compared to the current AMIF:

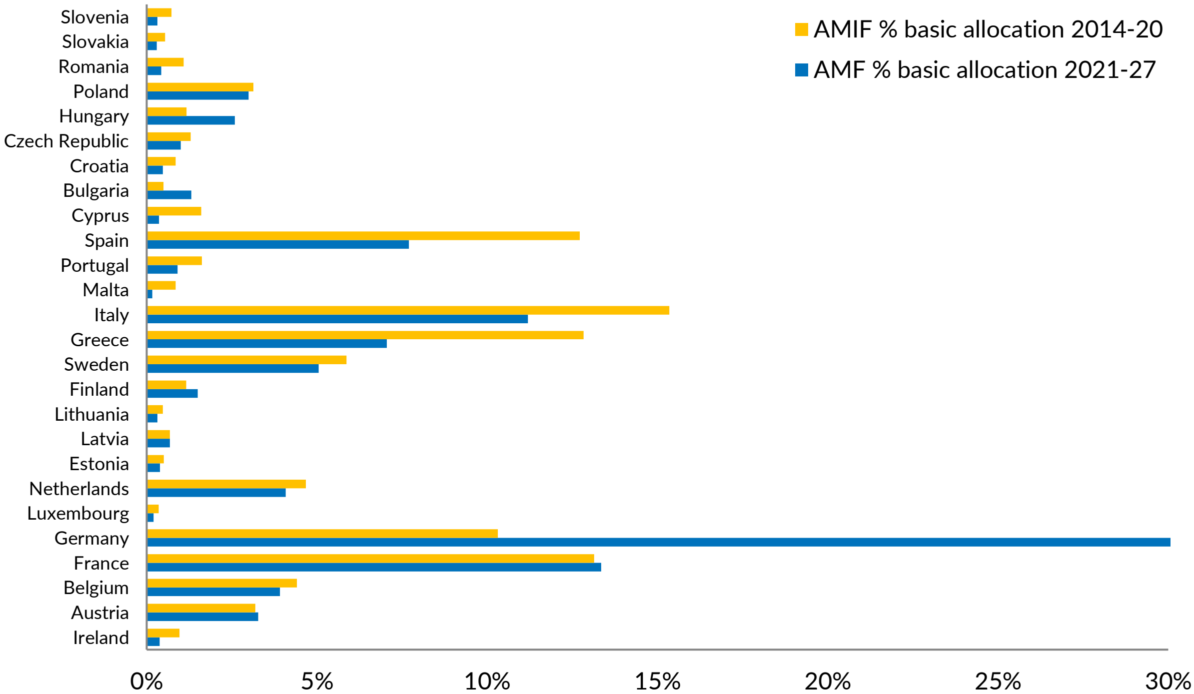

Figure 3.1: *Simulation of MS initial allocations of shared management resources (proposed AMF)*[5] *and initial allocations (AMIF 2014-20)*

Germany and France are the two Member States with the largest percentage initial allocations under the proposed AMF, accounting for 43.4% of the total AMF initial allocation envelope. Both could be argued to be significantly better positioned to meet migratory challenges than other Member States for which allocation shares are reduced, including for example Greece (12.83% in the AMIF to 7.05% in the AMF) and Italy (15.35% to 11.19%). However, as the AMF distribution key does not assess

[5] ***Asylum allocation:*** *persons granted refugee status 2015, 2016, 2017; persons granted subsidiary/temporary protection 2015, 2016, 2017; number of asylum applications: 2015-17; number of resettled persons 2015, 2016, 2017 (no data available for number of persons being resettled, as specified in the AMF distribution key).*
Integration & legal migration allocation: *total number of legally residing TCNs 2015-2017 (data filtered to include permits of 12 months or longer duration and exclude permits related to education); number of TCNs obtaining a first residence permit (data filtered to exclude students or permits of less than 12 months duration) 2015-17.*
Countering irregular migration allocation: *number of TCNs subject to a return decision 2015-2017; number of TCNs who have left the territory as a result of an order to leave (voluntary or forced) 2015-2017.*

existing capacities and resources of Member States to manage migration, or current economic and/or social challenges in relation to their general populations, the relative 'starting points' of Member States are not incorporated into the key's calculations.

Additionally, factors such as asylum claims, grants of protection status and resident third country nationals are included in the key as total numerical values, without reference to their relationship to the size of Member State populations. Their relative impact in different national contexts is therefore not accounted for in the planned distribution of AMF resources.

ii. Financially rewarding low asylum recognition rates

While the majority of the statistical evidence on which the AMF's proposed distribution key is based assesses needs in individual Member States, the indicators used to calculate allocations under the countering irregular migration priority are more measures of the extent to which return is prioritised in practice by Member States ('*number of third-country nationals subject to a return decision*') and of Member State performance in relation to returns ('*number of third-country nationals who have left the territory as a result of an order to leave*').

In terms of financial allocations resulting from the use of these indicators, Greece, Bulgaria, Croatia, Hungary, Poland, Slovakia and Slovenia are effectively being financially rewarded for asylum recognition rates far lower than the EU average, which in turn create larger populations eligible for return procedures:

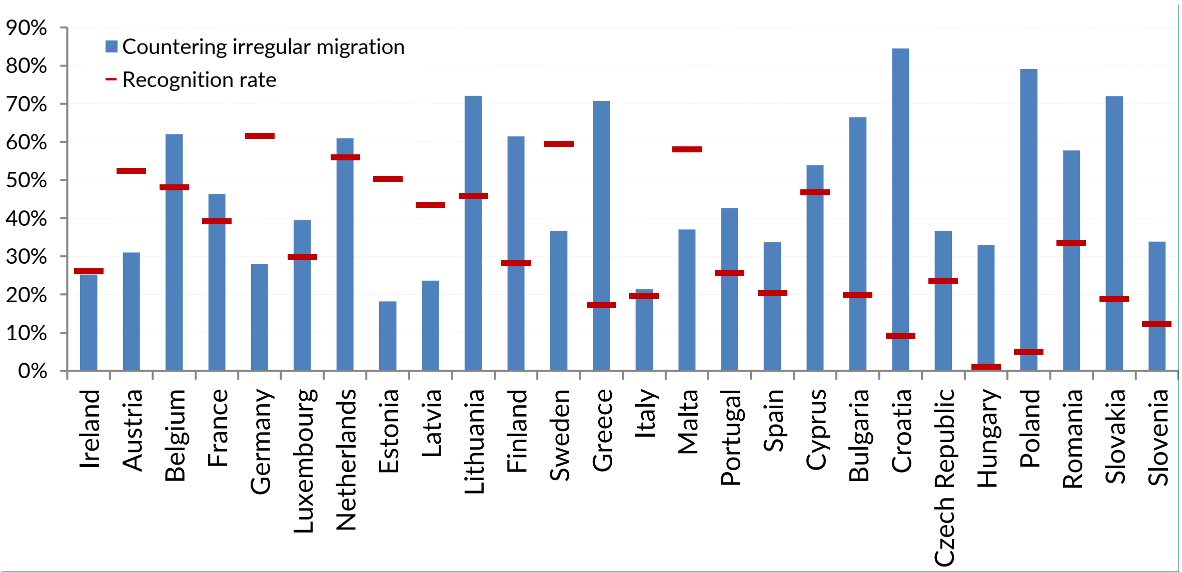

***Figure 3.2:** % MS AMF allocations 2021-27 ('countering irregular migration' priority) and MS asylum recognition rates (2015-17)*[6]

iii. National absorption capacity affecting implementation

The capacity to absorb and make effective use of EU resources varies widely across Member States. Implementation of the current AMIF, for example, has been limited by national authorities not issuing Calls for Proposals, or failing to address particular programme priorities when they do.[7] Absorption capacity may also be affected by emergencies, as in the increased arrivals of asylum seekers seen in some Member States during 2015-16, or a lack of national resources with which to provide required co-financing.

Regardless of how appropriate AMF allocations to Member States are, if national authorities cannot fully implement the resources allocated to them, the overall efficiency and impact of the Fund will be lessened. The AMF proposes to allocate 83.3% (€5.21bn) of shared management resources to

[6] *Asylum recognition rates are here expressed as number of persons granted refugee status or temporary/subsidiary protection in a specific year as a percentage of the number of asylum claims in the same year. The calculation is indicative only, as the grants of status in any one year do not necessarily relate to the specific asylum claims made in the same year.*
[7] *ECRE & UNHCR (2018) 'Follow the Money: Assessing the use of EU Asylum, Migration & Integration Fund (AMIF) funding at the national level'*

Member State programmes at the outset of the 2021-27 programming period, with no stated mechanism to take back/reallocate resources which are unspent. A lack of Member State absorption capacity could therefore result in unused AMF resources, often in national contexts in which needs are more acute.

How can the risks be mitigated?

i. Amended AMF distribution key

In order to ensure a distribution of AMF shared management funds that more accurately maps needs and capacities in participating Member States, the proposed distribution key would usefully be amended to ensure it addresses AMF priorities equally, and incorporates a consideration of Member State situations, needs and capacities in relation to their implementation.

The amended AMF distribution key set out in Figure 3.3, below, accordingly incorporates GDP per capita and Member State use of AMIF emergency assistance during 2014-20 (as an indicator of insufficient national resources to meet migratory challenges), and weights these factors equally with the three AMF priorities:

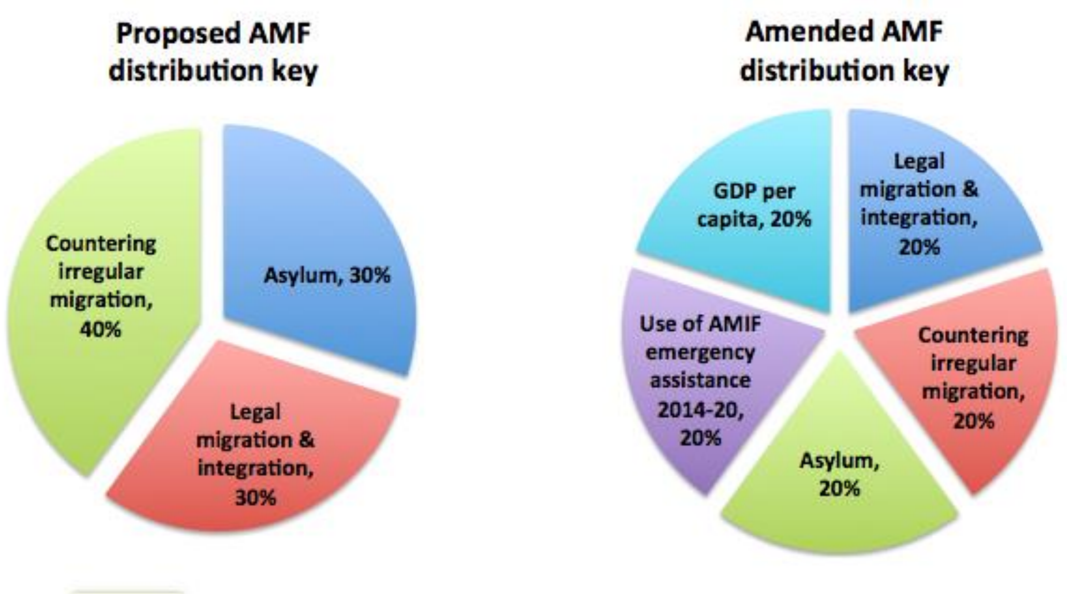

Figure 3.3: *Proposed and amended AMF distribution keys*

The amended key uses the same statistical data for allocation calculations for the three AMF priorities as is included in the current key, but expresses data on asylum claims, persons granted protection/resettled, resident third-country nationals and persons granted residence per 1000 of population. As in Figure 3.4, below, applying this amended key produces a more equitable distribution of AMF resources that better addresses the needs and capacities of the different Member States in relation to AMF implementation:

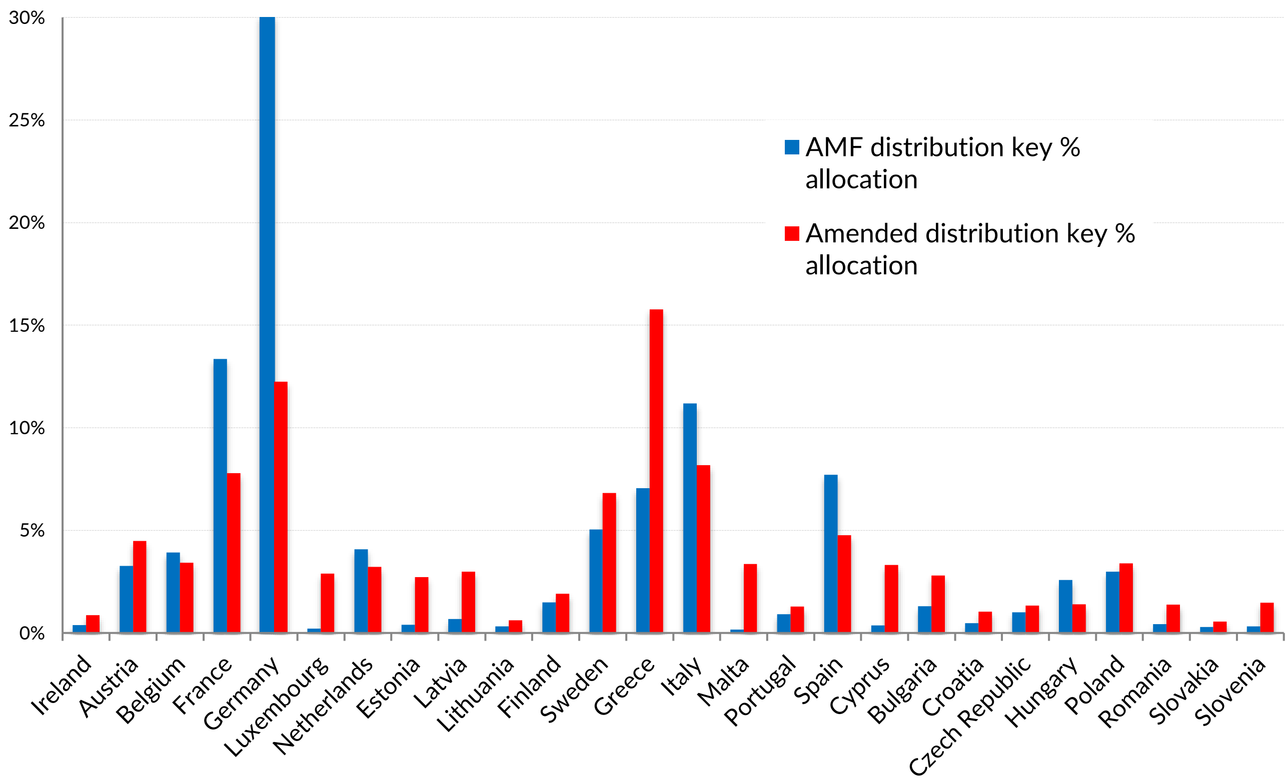

Figure 3.4: *AMF basic allocations to Member States (AMF distribution key and amended distribution key)* [8]

ii. Linking allocation of AMF resources based on return indicators to asylum recognition rates

Rather than allocating funds based on Member State 'performance' in relation to return, the AMF distribution key would more usefully link the allocation of funds to individual MS to a convergence of asylum recognition rates at the EU level.

This could be achieved by introducing a mechanism to reduce funding allocated in relation to this priority for Member States whose asylum recognition rate is lower than the EU average in the three years from which statistical data for the AMF distribution key is drawn. Such a mechanism could proportionately reduce financial allocations according to the percentage amount Member State recognition rates fall behind the EU average. This would provide a more accurate picture of Member State needs in relation to return, and financially incentivise an upward convergence of recognition rates.

Additionally, the distribution key could contribute to realising the AMF's policy aim of giving preference to voluntary return over forced/coercive return, by including separate statistical indicators for these two types of return and weighting voluntary returns more heavily in the key's allocations calculation. This would additionally incentivise Member States to collect better data on voluntary return operations, which is currently limited.[9]

iii. Restructuring initial AMF allocations to Member States

The proportion of AMF shared management resources allocated to Member State National Programmes at the start of the 2021-27 programming period could be reduced from the currently proposed 83.3% (€5.21bn) to 60% (€3.75bn). The remaining 40% (€2.5bn) would be allocated as planned via a reapplication of the distribution key at the 2024 mid-term review stage. Such a reduction

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[8] 2015-17 Eurostat data for 'legal migration and integration' and 'countering irregular migration' as in Figure 3.1, above. Data for 'asylum' is 2017 data included in Figure 3.1, above (data from 2015-16 is not included, so as to minimise the influence of the spike in asylum claims in several Member States during this period.
AMIF emergency assistance 2014-17 in European Commission (2018) 'Commission Staff Working Document: Interim Evaluation of the Asylum, Migration and Integration Fund 2014-2017'
GDP calculation uses 2017 GDP per capita and 2015 Member State population size (Eurostat)
[9] Eurostat Statistics on enforcement of immigration legislation

would minimise the risk presented by poor absorption capacity, whilst still facilitating a multiannual approach to national planning and programming.

The proposed AMF provides for resources not allocated to Member States at the mid-term review stage to be reallocated to the Fund's Thematic Facility.[10] If Member States are ineligible to receive allocations at the mid-term review stage due to low rates of implementation, as is proposed for the AMF, a reduction in initial allocations would mean larger portion of resources is available to redirect to the Thematic Facility. These resources could in turn be made available to actors with more capacity to implement the funds, including for example local authorities and civil society organisations, and used to assist Member States dealing with emergencies affecting the implementation of AMF National Programmes.

4. ALLOCATION OF FUNDS WITHIN NATIONAL PROGRAMMES (ASYLUM & MIGRATION FUND)

What is proposed?

The current AMIF requires Member States to allocate a minimum of 40% to the asylum (20%) and integration (20%) priorities within their National Programmes, albeit without a corresponding requirement to spend according to these allocations.

By contrast, Member States implementing AMF programmes are not required to make minimum allocations to the any of the Fund's three priorities. The EC's interim evaluation of the AMIF reports this change to be in line with MS views that minimum allocations per SO *'negatively affect efficiency'*,[11] but does not offer any specific examples or further detail on this point.

What are the risks?

i. National spending dictates programme priorities

AMF National Programmes must adequately address all implementation measures across the Fund's three priority areas, and Member States must agree AMF National Programmes with the EC. While this approval process would naturally include an assessment of planned budget allocations across priorities, the absence of minimum allocation requirements means Member States would be free to determine what constitutes an adequate allocation for each priority, based on needs they themselves have identified.

As evidenced by national implementation of the current AMIF to date, minimum allocation requirements do not produce spending to the same levels. Even if minimum allocations can create some level of accountability for Member States, who can be asked to account for derogation from initial budget allocations, a lack of corresponding spending requirements means Member States can in effect use expenditure to prioritise particular policy areas. The AMF as it is currently structured offers no guarantees that national spending will not be used in this way, and creates a risk that EU funding will be implemented according to the political priorities of individual Member States rather than Union priorities.

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[10] *40% (€4.17bn) of the AMF's financial envelope is allocated to the Thematic Facility, to be implemented via shared, direct and/or indirect management. The Thematic Facility is programmed via work programmes issued by the EC every two years, and can support:*

- *Specific actions*
- *Union actions.*
- *Emergency assistance.*
- *Resettlement.*
- *Support to MS contributing to solidarity and responsibility efforts.*
- *European Migration Network.*

[11] *European Commission (2018) 'Report from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee Of The Regions on interim evaluation of the Asylum, Migration and Integration Fund and the Internal Security Fund', p16*

How can the risks be mitigated?

i. Minimum allocation & spending requirements for AMF priorities

In order for AMF implementation to contribute to Union priorities across Member States, the Fund should mandate minimum allocations to each of its three priority areas. A number of useful proposals on the level of minimum allocation for each AMF priority have been published to date,[12] and this aspect of national programming of the AMF merits further discussion.

To ensure coherence between initial programming and final expenditure, minimum allocations to AMF priorities must be introduced alongside a corresponding requirement to spend according to these allocations.

5. PARTICIPATION OF THIRD COUNTRIES (ASYLUM & MIGRATION FUND)

What is proposed?

In a significant shift toward external use of EU funding for asylum and migration at the national level, the AMF provides for third countries to be direct beneficiaries of Member State National Programmes.

The Fund particularly emphasises cooperation with third countries for the purposes of managing migration, with Member States able to provide incentives to third countries to accept and reintegrate returnees, and resource infrastructure, equipment and 'other measures' in third countries to counter irregular migration.

A Member State wishing to implement actions in or with a third country must consult with the EC prior to doing so, and the participation of third countries must be set out in a specific agreement. AMF-supported actions in or with third countries must *'complement other actions...supported through the Union's external financing instruments'* and be coherent with *'the principles and general objectives of the Union's external action and foreign policy in respect of the country or region in question and the Union international commitments'*.[13]

What are the risks?

i. Human rights implications of AMF actions in relation to third countries

Although the AMF emphasises participation of third countries in return and readmission, any of the actions in the Fund's scope of support can be implemented in and in relation to third countries. Both this provision, and a general reference to *'other measures'* in the context of AMF actions in third countries to counter irregular migration, create a great deal of uncertainty as to the scope of action that Member States programmes can support in third countries.

The participation of third countries in the AMF raises a number of important legal and ethical questions, not least the need to ensure the fundamental rights of persons migrating from or being returned to countries outside of the EU. The lack of clarity on the scope of AMF support in this context prevents any clear assessment of the human rights implications of potential AMF actions in/with third countries.

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[12] *For example, 30% minimum allocation for the integration priority and 20% for the asylum priority (recommended in ECRE & UNHCR (2018) 'Follow the Money: Assessing the use of EU Asylum, Migration & Integration Fund (AMIF) funding at the national level'); 50% for the asylum priority and 30% for the integration priority (recommended in European Council on Refugees & Exiles (2018) 'ECRE Comments on the European Commission proposal on the Asylum and Migration Fund').*

[13] *Recital 30, AMF Regulation*

ii. Policy implications of AMF actions in relation to third countries

Although AMF actions in relation to third countries are required to be coherent with external actions and foreign policy, the proposal does not detail management or coordination arrangements between DG Home Affairs and the different services responsible for EU external actions. It is therefore unclear how these requirements will be fulfilled, and to what extent the AMF's narrow migration management focus will interact with broader policy and diplomatic aims in third countries.

iii. Lack of transparency in approving third country participation

The requirement for Member States to consult with the EC prior to commencing an AMF project with/in a third country does not clarify if the EC must approve such actions and, if so, what criteria it will use to do so. The extent to which the EC will exercise oversight of third country involvement in the Fund is therefore unclear, most importantly with regard to the human rights implications of such actions and their coherence with EU external actions and policy.

How can the risks be mitigated?

i. Define and limit the scope of AMF actions in relation to third countries

The AMF should restrict actions in relation to third countries to readmission, return, and information provision to counter irregular migration. Given the risk that AMF resources may be used to support legally and ethically dubious detention and security measures, provisions for the AMF to resource infrastructure and equipment in third countries should be removed.

ii. Clarify management arrangements at the European level

To ensure wider policy coherence, the respective roles and remits of the EC, European External Action Service and DG Home Affairs External Cooperation Unit in managing the involvement of third countries in the AMF should be clarified.

iii. Define criteria and a process for approving third country participation

The EC should be required to formally approve Member State requests for the participation of third countries in the AMF, and to publish minimum criteria that such proposals must meet in order to be approved. These criteria should include a clear framework for determining human rights compliance, both at the point at which participation is agreed and throughout the subsequent implementation. Specific provisions should also be made for the involvement of the European Parliament in decisions on the participation of third countries in AMF national programmes, and in the monitoring of actions they are involved in.

6. PARTNERSHIP

What is proposed?

Member States must organise partnerships of public authorities, economic and social partners and bodies representing civil society at national, regional and local levels, and involve them in the preparation, implementation, monitoring and evaluation of National Programmes for the shared management Funds. This should be carried out in accordance with the January 2014 *European Code of Conduct on Partnership in the framework of the European Structural and Investment Funds* (ECCP), which is now newly applicable to the AMF.

Proposed common rules for the shared management Funds introduce a new requirement for the EC to consult organisations representing partners at the European level on the implementation of programmes at least once per year.

What are the risks?

i. Lack of awareness of the European Code of Conduct on Partnership

During the current 2014-20 programming period, the ECCP was issued after the preparation of National Programmes was underway or completed, and 2021-27 will thus be the first programming period in which the ECCP is in place during the programme preparation phase.

The late finalisation of the ECCP has led to a lack of awareness of its provisions amongst actors involved in the implementation of Structural and Investment Funds at the national level, including the ESF.[14] Awareness amongst national actors who will be involved in the AMF is also likely to be relatively low, given the new applicability of the ECCP to this funding area. There is a significant subsequent risk that the ECCP's provisions will not be fully implemented in the preparation of National Programmes, and national partnerships will not be fully established until programme implementation is underway.

ii. Lack of consistency between the European Code of Conduct on Partnership and proposed shared management Funds

Although the ECCP is newly applicable to the proposed AMF, and governs partnership arrangements for significantly amended European Structural and Investment Funds, the EC has not indicated that it will be amended prior to the next programming period. This results in several inconsistencies in terminology between the ECCP and the new proposals, and in how the ECCP refers to the specific Funds and programmes to which it applies. Particularly notable inconsistencies are those regarding the role of Monitoring Committees in programme reporting and reviews, and the absence of international organisations - important migration and asylum actors at national level - amongst the specified types of organisations to be involved in national partnerships.

Such inconsistencies are likely to cause uncertainty about how the ECCP's provisions should be applied in the preparation, implementation and evaluation phases of the proposed shared management Funds, and lead to uneven application of the ECCP across implementing Member States.

iii. Limited impact of consultation with European partners

Neither the new proposals nor the ECCP provide any specific information on the scope, purpose and format of EC consultations with organisations representing partners at the European level. Without such provisions, programme implementation may not fully benefit from the knowledge and expertise of partners at the European level.

How can the risks be mitigated?

i. An updated European Code of Conduct on Partnership

The EC should revise the ECCP to fully align it with the proposed shared management Funds, and provide additional guidance and best practice examples from the current programming period to support its future implementation.

A revised ECCP should also clarify the purpose, format and frequency of consultation with representative European partners, and how the outcomes of these consultations will be made use of in relation the Funds' implementation, and be in place before Member States begin preparing Partnership Agreements and National Programmes.

[14] *ESF Thematic Network on Partnership (2018) 'Review of the European Code of Conduct on Partnership'*

7. ACCESS TO FUNDING FOR CIVIL SOCIETY ORGANISATIONS AND LOCAL AUTHORITIES

What is proposed?

As in 'Partnership', above, civil society organisations and public authorities must be included in the partnerships that Member States are required to establish and involve in the preparation, implementation, monitoring and evaluation of national programmes for shared management Funds. Civil society partners include community-based and voluntary organisations, and public authorities include urban authorities.

Within their national programmes, Member States can make provision for technical assistance, or resources for actions to build the institutional and technical capacity of partners to participate in national partnerships. The ECCP suggests that smaller local authorities and non-governmental organisations might particularly benefit from such support, and suggests several methods for providing it (including dedicated workshops, training sessions, coordination and networking structures and contributions to the cost of participating in relevant meetings).

The proposed AMF uses differential co-financing provisions to encourage Member States to include civil society organisations and local/regional authorities in specific areas of national implementation. The general Union co-financing contribution for AMF actions is set at a maximum of 75%, while a higher maximum contribution of 90% is introduced for a defined list of actions that include integration measures implemented by local/regional authorities and civil society organisations.[15]

What are the risks?

i. Exclusion of civil society organisations and local authorities from funding

There is no requirement for Member States to allocate minimum shares of national shared management resources to particular types of actors, including civil society organisations and local authorities.

Data published by Member States in the context of the interim evaluation of the current AMIF shows a wide variation in the extent to which national authorities have disbursed AMIF funds to implementing partners, ranging from even disbursement to a range of beneficiary organisations to almost wholly state-led implementation. The new proposals provide no mechanism to correct this inconsistency and ensure the expertise and capacity of civil society organisations and local authorities is fully utilised in the Funds' implementation. For Member States in which relationships between national authorities and civil society organisations are more adversarial, the proposals do not safeguard against their deliberate exclusion from Union funding.

ii. Unclear needs assessment and evaluation provisions for technical assistance

Member States are required to detail the planned use of technical assistance in national programmes for shared management Funds, including types of intervention, but are not required to provide objectives, milestones or targets in this context. Programmes therefore make no clear link between Member State's intentions in this area and actual needs in relation to capacity-building for national partners in their particular contexts.

While capacity-building actions for beneficiaries must be included in performance reporting across the Funds, the lack of indicators or targets for this area of work means there is no framework by which to evaluate national implementation of technical assistance and ensure partner organisations are receiving the support they need to participate fully in national programmes.

[15] Other types of actions eligible for the higher maximum Union co-financing contribution of 90% under the AMF are voluntary assisted return and reintegration activities; actions to develop and implement alternatives to detention; measures targeting vulnerable persons with particular reception/procedural needs, in particular unaccompanied children.

iii. Distribution of technical assistance resources does not map onto need

Common rules for the shared management Funds introduce a flat rate mechanism for the payment of technical assistance resources to Member States, in which these funds are paid in the form of a 2.5-6% top up of each interim payment to a Member State. The payment of technical assistance is thus linked to progress in implementation, with Member States implementing programmes more slowly receiving less resources to build the capacity of programme partners.

A slower rate of programme implementation could be caused by any number of factors, but may include insufficient capacity of partner organisations to access national programme resources and/or effectively implement actions for which they have already received funding. Linking technical assistance to progress in implementation in the manner set out in the new proposals therefore risks withholding support from the contexts and partners amongst which the need for it is most acute.

iv. A narrow role for civil society organisations and local authorities

The AMF's proposed higher co-financing rate for integration measures implemented by civil society organisations and local authorities is a welcome acknowledgement of these actors' expertise in this area. However, the provision does not acknowledge the significant contribution that these actors make in the areas of asylum and return under the current AMIF, and the potential to continue this contribution in the framework of the proposed AMF. This narrowing of common understandings of the role of such actors presents additional risks in national contexts in which civil society actors are the dominant force in promoting compliance with EU law in the areas of asylum and return.

v. Co-financing requirements as a barrier to accessing funding

The general maximum Union co-financing rate for the proposed AMF is set at the same 75% as the current AMIF. Under the current AMIF, some Member States guarantee the 25% national co-financing from state resources, providing beneficiary organisations with grants equivalent to 100% of project costs, whilst others co-finance selectively or require beneficiaries to independently source the required 25% of project costs as a condition of grant award. Where national authorities have elected not to provide required co-financing from national resources, this has in some instances acted as a barrier to civil society participation in national programmes.[16] As currently structured, the proposed AMF risks maintaining this difficulty.

How can the risks be mitigated?

i. Minimum allocations of programme funding to civil society organisations and local authorities

To ensure consistent participation of civil society organisations and local authorities in national programmes, each of the shared management Funds should introduce minimum allocations of programme funding for these actors across all of their priority areas.

Minimum allocation levels could be set across the Funds. Alternatively, and to Ensure factors such as the role and capacity of civil society and local government in specific national contexts, minimum allocations could be set for each Fund per Member State in the course of preparing and agreeing national programmes.

ii. Treat technical assistance as other programme priorities/objectives

To ensure Member State use of technical assistance adequately responds to national needs and can be assessed on this basis, Member States should be required - as for other programme priorities/objectives - to include an explicit needs assessment, objectives and corresponding indicators and targets for its use in national programmes.

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[16] ECRE & UNHCR (2018) *'Follow the Money: Assessing the use of EU Asylum, Migration & Integration Fund (AMIF) funding at the national level'*

The flat rate mechanism for the payment of technical assistance, and the link between implementation progress and payment of technical assistance should be removed. Technical assistance payments should instead be undertaken as for other programme priorities/objectives, with payments based on reporting of eligible expenditure.

iii. Amended co-financing provisions

The list of AMF actions eligible for the higher maximum co-financing contribution of 90% should be expanded to include any AMF action implemented by of civil society organisations and local authorities. Such an amendment would ensure the accessibility of funding for these actors across AMF priorities, and acknowledge the contribution they can make to effective implementation of the Fund in areas additional to integration.

Again to improve the accessibility of AMF funding for civil society organisations and local authorities, the general maximum Union co-financing contribution should be increased from 75% to 80%. Additionally, Member States should be required to provide a minimum of 50% of the required national co-financing contribution (12.5% of total project costs) from national resources, with a recommendation to provide 100% grant funding wherever possible.

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