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**2018/0249(COD)**

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#### **'I/A' ITEM NOTE**

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From: General Secretariat of the Council  
To: Permanent Representatives Committee/Council

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Subject: Proposal for a Regulation of the European Parliament and of the Council establishing, as part of the Integrated Border Management Fund, the instrument for financial support for border management and visa  
- General approach

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#### **I. INTRODUCTION**

1. On 13 June 2018, the Commission put forward a proposal for a Regulation of the European Parliament and of the Council establishing, as part of the Integrated Border Management Fund, the instrument for financial support for border management and visa<sup>1</sup> (hereafter 'BMVI' or 'the Instrument') under Heading 4 (Migration and Border Management) of the Multiannual Financial Framework (MFF) 2021-2027.

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<sup>1</sup> 10151/18 + ADD 1, ADD 1 COR 1

2. The BMVI is one of the two instruments of the new Integrated Border Management Fund, the other one being the instrument for financial support for customs control equipment. The objective of the Instrument is to ensure strong and effective European integrated border management at the external borders while safeguarding the free movement of persons within it, in full compliance with the Union's commitments on fundamental rights, thereby contributing to guaranteeing a high level of security in the Union. More concretely, the Instrument will contribute to: (i) facilitating legitimate border crossings, preventing and detecting illegal immigration and cross-border crime and managing migration flows; (ii) supporting the common visa policy to facilitate legitimate travel.

## **II. WORK IN OTHER INSTITUTIONS**

3. In the European Parliament, the file was assigned to the Civil Liberties, Justice and Home Affairs (LIBE) Committee with Tanja Fajon (S&D, SI) as rapporteur. Following the preparatory work by the Committee, the European Parliament adopted its first-reading position<sup>2</sup> at the plenary session of 13 March 2019.
4. The European Economic and Social Committee adopted an opinion at the plenary session of 17 October 2018<sup>3</sup>.
5. The Committee of the Regions did not deliver an opinion on this Instrument.

## **III. WORK IN THE COUNCIL PREPARATORY BODIES**

6. On 7 June 2019, following preparatory work at the Permanent Representatives' Committee and at the Ad Hoc Working Party on JHA Financial Instruments, the Council adopted a Partial general approach<sup>4</sup> on the abovementioned proposal, which also served as the mandate for negotiations with the European Parliament. The partial general approach excluded a number of provisions due to their link to the overall MFF discussions or their horizontal nature.

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<sup>2</sup> 7403/19  
<sup>3</sup> 13606/18  
<sup>4</sup> 10141/19

7. Furthermore, on 18 December 2019, the progress report<sup>5</sup> presented to the Permanent Representatives' Committee on the ongoing inter-institutional negotiations also included the Presidency compromise proposal reflecting the discussions held on Annex I, which secured the necessary support, pending guidance from the **European Council** on the issue concerning insular societies.

#### **IV. STATE OF PLAY**

8. The **European Council** provided political guidance on the MFF and the Recovery package in its conclusions<sup>6</sup> of 21 July 2020.
9. On the basis of the political guidance received from the **European Council**, the Presidency started preparing a compromise text for a possible general approach on the entire proposal, replacing all bracketed provisions in the partial general approach reached in June 2019.
10. Following discussions at informal video conference meetings with members of the **JHA Counsellors on Financial Instruments** on 1 and 11 September, the Presidency presented its compromise text for a possible general approach at the informal video conference with members of the **JHA Counsellors on Financial Instruments** on 22 September.
11. On the basis of the feedback received at the informal video conference meeting on 22 September, and thereafter in writing, the Presidency prepared a revised compromise text for a possible general approach, which can be found in the Annex to this note.

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<sup>5</sup> 14621/19

<sup>6</sup> 10/20

## V. AMENDMENTS TO THE PARTIAL GENERAL APPROACH

12. The amendments to the partial general approach reached in June 2019 are as follows: square brackets were removed from all amounts, which were also converted into current prices (Articles 7 and 10, Annex I). Additionally, square brackets were removed from provisions with a horizontal nature: anti-fraud provisions (recital 52), the overall target of the EU budget expenditure supporting climate objectives (recital 57), horizontal provisions on the establishment of the instrument for the period 2021-2027 (Article 1), provisions on the mid-term review (recital 39, Articles 10 and 13) and the criteria for the allocation of funding to the programmes under shared management (Annex I). This Annex and recital 34 were also updated in order to grant higher amounts to Cyprus, Malta and Greece at the start of the programming period.

Regarding the rules adopted in the event of general deficiencies with respect to the rule of law (recital 53), the recital was updated pending the outcome of negotiations on the conditionality regime. The provisions on transfers under Seal of Excellence were harmonised in line with a horizontal approach across sectoral proposals (Article 24).

Provisions on information, communication and publicity (Article 22), including exceptions for information of classified or confidential nature, on the implementation of the EU budget (recital 48) and on the Inter-institutional Agreement on Better Law-Making (recital 56) were updated in line with standard provisions revised by the lawyer-linguists.

Specific additions were included with respect to the external dimension of migration (recital 34, Articles 8 and 25). New provisions were also included on pre-financing (recital 50a, Articles 10a and 23(3)), a 'receiving clause' to allow transfers with other programmes (Article 7(5)) and transitional provisions (recital 57a, Article 31(3)).

Finally, the recital on the non-participation of the UK in the instrument was removed (recital 66a). The remaining square brackets refer to legal acts that are still the subject of negotiations or that are not yet adopted (such as the CPR, the ISF or InvestEU), and they may need to be updated at a later stage.

The revised version of this note includes changes to Articles 10(1)(b) and 11(5a) of the Presidency compromise text.

## VI. CONCLUSION

13. The Permanent Representative Committee is therefore invited to:
- i. examine the Presidency compromise text annexed to this note and to recommend that the Council reach a general approach on this basis, and as agreed by the Committee, with a view to it serving as a negotiating mandate for the Presidency in the ongoing negotiations with the EP;
  - ii. agree that the Council reach a general approach as an ‘A’ item at a forthcoming meeting.
14. All changes compared to the partial general approach reached on 7 June 2019 are indicated in ***bold italics underlined***. In addition, all provisions formerly bracketed are also highlighted in grey.
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2018/0249 (COD)

Proposal for a

**REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**establishing, as part of the Integrated Border Management Fund, the instrument for financial support for border management and visa**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Articles 77(2) and 79(2)(d) thereof

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee<sup>7</sup>,

Having regard to the opinion of the Committee of the Regions<sup>8</sup>,

Acting in accordance with the ordinary legislative procedure,

Whereas:

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<sup>7</sup> OJ C , , p. .

<sup>8</sup> OJ C , , p. .

- (1) In the context of evolving migratory challenges in the European Union, as well as security concerns, preserving the careful balance between free movement of persons on the one hand, and security on the other is of utmost importance. The Union's objective of ensuring a high level of security within an area of freedom, security and justice pursuant to Article 67(3) of the Treaty on the Functioning of the Union (TFEU) should be achieved, among others, through common measures on the crossing of internal borders by persons and on border controls at external borders and the common visa policy.
- (2) Pursuant to Article 80 TFEU, these policies and their implementation should be governed by the principle of solidarity and fair sharing of responsibility, including its financial implications, between the Member States.
- (3) In the Rome Declaration signed on 25 ~~March~~ ~~September~~ 2017, leaders of 27 Member States affirmed their determination to a safe and secure Europe and to build a Union where all citizens feel safe and can move freely, where the external borders are secured, with an efficient, responsible and sustainable migration policy, respecting international norms, as well as a Europe determined to fight terrorism and organised crime.
- (4) The objective of the Union's policy in the field of external border management is to develop and implement European integrated border management at national and Union level, which is a precondition for the free movement of persons within the Union and is a fundamental component of an area of freedom, security and justice.

- (5) European integrated border management, as implemented by the European Border and Coast Guard, established by Regulation (EU) .../2019 [EBCG] 2016/1624 of the European Parliament and of the Council<sup>9</sup>, composed of the European Border and Coast Guard Agency and the national authorities responsible for border management, including coast guards to the extent that they carry out border control tasks, is necessary for improving migration management and security.
- (6) Facilitating legitimate travel, while preventing irregular migration and security risks, was identified as one the main objectives of the Union's response to the challenges in these areas in the Commission's Communication on *A European Agenda on Migration*<sup>10</sup>.
- (7) The European Council of 15 December 2016<sup>11</sup> called for continued delivery on the interoperability of EU information systems and databases. The European Council of 23 June 2017<sup>12</sup> underlined the need to improve interoperability between databases and on 12 December 2017 the Commission adopted a proposal for a Regulation on establishing a framework for interoperability between EU information systems<sup>13</sup>.
- (8) To preserve the integrity of the Schengen area and to strengthen its functioning, Member States have, since 6 April 2017, been obliged to carry out systematic checks against relevant databases on EU citizens who are crossing the EU's external borders. Furthermore, the Commission issued a Recommendation to Member States to make better use of police checks and cross-border cooperation.

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<sup>9</sup> ***Regulation (EU) .../2019 of the European Parliament and of the Council on the European Border and Coast Guard and repealing Council Joint Action No 98/700/JHA, Regulation (EU) No 1052/2013 of the European Parliament and of the Council and Regulation (EU) No 2016/1624 of the European Parliament and of the Council.***

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

<sup>10</sup> COM(2015) 240 final of 13 May 2015.

<sup>11</sup> <http://www.consilium.europa.eu/en/press/press-releases/2016/12/15/euco-conclusions-final/>

<sup>12</sup> [European Council conclusions](#), 22-23 June 2017.

<sup>13</sup> COM(2017) 794 final.



- (9) Financial support from the Union budget is indispensable to the implementation of European integrated border management to support Member States in managing the crossing of the external borders efficiently and in addressing migratory challenges and potential future threats at those borders, thereby contributing to addressing serious crime with a cross-border dimension while acting in full respect of fundamental rights.
- (10) To promote the implementation of the European integrated border management defined by its components in accordance with Article 34 of Regulation (EU) .../2019 [EBCG] 2016/1624: border control, search and rescue during border surveillance, risk analysis, cooperation between Member States (supported and coordinated by the European Border and Coast Guard Agency), inter-agency cooperation (including the regular exchange of information), cooperation with third countries, technical and operational measures within the Schengen area related to border control and designed to address illegal immigration and to counter cross-border crime better, use of state-of-the-art technology, quality control and solidarity mechanisms, and to ensure that it becomes an operational reality, Member States should be provided with adequate Union financial support.
- (10a) The European Council of 18 October 2018 invited the European Parliament and the Council to examine, as a matter of priority, the recent Commission proposals on the Return Directive, the Asylum Agency and the European Border and Coast Guard, ensuring the most efficient use of resources and developing common minimum standards of external border surveillance, with due respect for the responsibility of the Member States. If such standards are developed, this instrument may provide the necessary support to Member States for their implementation.***

- (11) As customs authorities of the Member States have been taking up an increasing number of responsibilities which often extend to the field of security and take place at the external border, ensuring uniformity in carrying out border control and customs control at the external borders needs to be addressed by providing adequate Union financial support to the Member States. This will not only strengthen customs controls but also facilitate legitimate trade, contributing to a secure and efficient customs union.
- (12) It is therefore necessary to establish the successor fund of the 2014-2020 Internal Security Fund established by Regulation (EU) No 515/2014 of the European Parliament and of the Council<sup>14</sup> by setting up an Integrated Border Management Fund (‘the Fund’).
- (13) Due to the legal particularities applicable to Title V of the TFEU and the different applicable legal bases regarding the policies on external borders and on customs control, it is not legally possible to establish the Fund as a single instrument.
- (14) The Fund should therefore be established as a comprehensive framework for Union financial support in the field of border management and visa comprising the instrument for financial support for border management and visa (‘the instrument’) established by this Regulation as well as the instrument for financial support for customs control equipment established by Regulation (EU) No .../...<sup>15</sup> of the European Parliament and of the Council. The framework should be complemented by Regulation (EU) No .../... [Common Provisions Regulation] of the European Parliament and of the Council<sup>16</sup>, to which this Regulation should refer as regards rules on shared management.
- (15) The instrument should be implemented in full compliance with the rights and principles enshrined in the Charter of Fundamental Rights of the European Union and with the Union’s international obligations as regards fundamental rights.

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<sup>14</sup> Regulation (EU) No 515/2014 of the European Parliament and of the Council of 16 April 2014 establishing, as part of the Internal Security Fund, the instrument for financial support for external borders and visa and repealing Decision No 574/2007/EC (OJ L 150, 20.5.2014, p. 143).

<sup>15</sup> OJ L [...], [...], p.

<sup>16</sup> OJ L [...], [...], p.

- (16) The instrument should build on the results and investments achieved with the support of its predecessors: the External Borders Fund for the period 2007-2013 established by Decision No 574/2007/EC of the European Parliament and of the Council<sup>17</sup> and the instrument for external borders and visa as part of the Internal Security Fund for the period 2014-2020 established by Regulation (EU) No 515/2014<sup>18</sup>, and should extend it to take into account new developments.
- (17) To ensure a uniform and high-quality external border control and to facilitate legitimate travel across the external borders, the instrument should contribute to the development of European integrated border management that includes all the measures involving policy, law, systematic cooperation, burden-sharing, assessment of the situation and changing circumstances regarding crossing points for irregular migrants, personnel, equipment and technology taken at different levels by the competent authorities of the Member States and by the European Border and Coast Guard Agency, acting in cooperation with other actors such as third countries and other EU bodies, in particular the European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice (eu-LISA), Europol and international organisations.
- (18) The instrument should contribute to the improvement of the efficiency of visa processing in terms of detecting and assessing security and irregular migration risks, as well as facilitating visa procedures for *bona fide* travellers. In particular, the instrument should deliver financial assistance to support digitalisation of visa processing with the objective to provide fast, secure and client-friendly visa procedures for the benefit of both visa applicants and consulates. The instrument should also serve to ensure wide consular coverage across the world. The uniform implementation **and the modernisation** of the common visa policy **as well as the measures stemming from the VIS Regulation and its modernisation** should also be covered by the instrument.

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<sup>17</sup> OJ L 144, 6.6.2007, p. 22.

<sup>18</sup> Regulation (EU) No 515/2014 of the European Parliament and of the Council of 16 April 2014 establishing, as part of the Internal Security Fund, the instrument for financial support for external borders and visa and repealing Decision No 574/2007/EC (OJ L 150, 20.5.2014, p. 143).

- (19) The instrument should support measures in the territory of the Schengen countries that are linked to border control as part of the development of a common integrated border management system, which strengthens the overall functioning of the Schengen area.
- (20) With a view to improving the management of the external borders, to contribute to preventing and combating irregular migration and to contribute to a high level of security within the area of freedom, security and justice of the Union, the instrument should support the development of large-scale IT systems, based on existing or new IT systems. It should also support the setting-up of interoperability between those EU information systems (Entry-exit system (EES)<sup>19</sup>, the Visa Information System (VIS)<sup>20</sup>, the European Travel Information and Authorisation System (ETIAS)<sup>21</sup>, Eurodac<sup>22</sup>, the Schengen Information System (SIS)<sup>23</sup> and the European Criminal Records Information System for third-country nationals (ECRIS-TCN))<sup>24</sup> in the Member States, in order for these EU information systems and their data to supplement each other. The instrument should also contribute to the necessary developments at national level following the implementation of the interoperability components at central level (European search portal (ESP), a shared biometric matching service (shared BMS), a common identity repository (CIR) and a multiple-identity detector (MID))<sup>25</sup>.

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<sup>19</sup> Regulation (EU) 2017/2226 of 30 November 2017 establishing an Entry/Exit System (EES) to register entry and exit data and refusal of entry data of third-country nationals crossing the external borders of the Member States and determining the conditions for access to the EES for law enforcement purposes, and amending the Convention implementing the Schengen Agreement and Regulations (EC) No 767/2008 and (EU) No 1077/2011 (OJ L 327, 9.12.2017, p. 20).

<sup>20</sup> Regulation (EC) No 767/2008/EC of the European Parliament and of the Council of 9 July 2008 concerning the Visa Information System (VIS) and the exchange of data between Member States on short-stay visas (VIS Regulation) (OJ L 218, 13.8.2008, p. 60).

<sup>21</sup> COM(2016) 731 final of 16 November 2016.

<sup>22</sup> COM(2016) 272 final/2 of 4 May 2016.

<sup>23</sup> COM(2016) 881 final, 882 final and 883 final of 21 December 2016.

<sup>24</sup> COM(2017) 344 final of 29 June 2017.

<sup>25</sup> COM(2017) 794 final of 12 December 2017.

- (21) The instrument should complement and reinforce the activities to implement European integrated border management in line with shared responsibility and solidarity between the Member States and the European Border and Coast Guard Agency representing the two pillars of the European Border and Coast Guard. This means, in particular that, when drawing up their programmes, Member States should take into account the analytical tools and operational and technical guidelines developed by the European Border and Coast Guard Agency as well as the training curricula developed by it, such as the common core curricula for the training of border guards, including its components with regard to fundamental rights and access to international protection. In order to develop complementarity between its mission and the responsibilities of the Member States for the control of the external borders as well as to ensure consistency and to avoid cost inefficiency, the Commission should consult the European Border and Coast Guard Agency *and eu-LISA, where appropriate*, on the draft national programmes submitted by the Member States in as far as it falls within the *Agencies'* competencies, ***in a timely manner that does not lead to a delay in the approval and implementation of the national programmes***, in particular on the activities financed under operating support.
- (22) The instrument should support the implementation of the hotspot approach as outlined in the Commission's Communication on *A European Agenda on Migration* and endorsed by the European Council of 25 and 26 June 2015<sup>26</sup>. The hotspot approach provides operational support to Member States affected by disproportionate migratory pressure at the Union's external borders. It offers integrated, comprehensive and targeted assistance in a spirit of solidarity and shared responsibility as well as with a view to safeguarding the integrity of the Schengen area.

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<sup>26</sup> EUCO 22/15 CO EUR 8 CONCL 3.

- (23) In the interest of solidarity in the Schengen area as a whole and in the spirit of shared responsibility for the protection of the Union's external borders, where weaknesses or risks are identified, in particular following a Schengen evaluation in accordance with Council Regulation (EU) No 1053/2013<sup>27</sup>, the Member State concerned should adequately address the matter by using resources under its programme to implement recommendations adopted pursuant to that Regulation and in line with vulnerability assessments carried out by the European Border and Coast Guard Agency in accordance with Article 33 ~~43~~ of Regulation (EU) .../2019 [EBCG] 2016/1624.
- (24) The instrument should express solidarity and shared responsibility through financial assistance for those Member States that fully apply the Schengen provisions on external borders and visas as well as those which are preparing for full participation in Schengen, and should be used by the Member States in the interests of the Union's common policy for the management of the external borders.
- (25) In accordance with Protocol No 5 to the 2003 Act of Accession<sup>28</sup> on the transit of persons by land between the region of Kaliningrad and other parts of the Russian Federation, the instrument should bear any additional cost incurred in implementing the specific provisions of the Union *acquis* covering such transit, namely Council Regulation (EC) No 693/2003<sup>29</sup> and Council Regulation (EC) No 694/2003<sup>30</sup>. The need for continued financial support for foregone fees, however, should be dependent upon the visa regime of the Union in force with the Russian Federation.

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<sup>27</sup> Council Regulation (EU) No 1053/2013 of 7 October 2013 establishing an evaluation and monitoring mechanism to verify the application of the Schengen *acquis* (OJ L 295, 6.11.2013, p. 27).

<sup>28</sup> OJ L 236, 23.9.2003, p. 946.

<sup>29</sup> Council Regulation (EC) No 693/2003 of 14 April 2003 establishing a specific Facilitated Transit Document (FTD), a Facilitated Rail Transit Document (FRTD) and amending the Common Consular Instructions and the Common Manual (OJ L 99, 17.4.2003, p. 8).

<sup>30</sup> Council Regulation (EC) No 694/2003 of 14 April 2003 on uniform formats for Facilitated Transit Documents (FTD) and Facilitated Rail Transit Documents (FRTD) provided for in Regulation (EC) No 693/2003 (OJ L 99, 17.4.2003, p. 15).

- (26) To contribute to the achievement of the policy objective of the instrument, Member States should ensure that their programmes address the specific objectives of the instrument, that the priorities chosen are in line with the agreed EU priorities and the implementing measures as set out in Annex II and that the allocation of resources between objectives and actions is proportionate to the challenges and needs they are faced with.
- (27) Synergies, consistency and efficiency should be sought with other EU Funds and overlap between the actions should be avoided.
- (28) Return of third-country nationals who are the subject of return decisions issued by a Member State is one of the components of European integrated border management as outlined in Regulation (EU) .../2019 [EBCG] 2016/1624. However, due to its nature and objective, measures in the field of return fall outside the scope of support of the instrument and are covered by Regulation (EU) No .../... [new AMF]<sup>31</sup>.
- (29) To acknowledge the important role of the Member States' customs authorities at the external borders and to ensure that they have at their disposal sufficient means to implement their broad scope of tasks at these borders, the instrument for financial support for customs control equipment established by Regulation (EU) No .../... [new Customs Control Equipment Fund] of the European Parliament and of the Council should provide these national authorities with the necessary funding to invest in equipment to carry out customs control as well as equipment that can in addition to customs control serve other purposes such as border control.

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<sup>31</sup> OJ L [...], [...], p.

- (30) Most customs control equipment may be equally or incidentally fit for controls of compliance with other legislation, such as provisions on border management, visa or police cooperation. The Integrated Border Management Fund has therefore been conceived as two complementary instruments with distinct but coherent scopes for the purchase of equipment. On the one hand, the instrument for border management and visa established by this Regulation will **financially support** ~~exclude~~ equipment **of which the primary purpose is integrated border management, but will also allow its use for additional purposes such as** ~~that can be used for both border management and~~ customs control. On the other hand, the instrument for customs control equipment **established by Regulation [2019/XXX]** will **financially** ~~not only~~ support ~~financially~~ equipment with customs controls as the main purpose, but will also allow its use as well for additional purposes such as border controls and security. This distribution of roles will foster inter-agency cooperation as a component of the European integrated border management approach, as referred to in Article **3(e) 4(e)** of Regulation (EU) ~~.../2019 [EBCG] 2016/1624~~, thereby enabling customs and border authorities to work together and maximising the impact of the Union budget through co-sharing and inter-operability of control equipment. **The act of co-sharing and interoperability between customs and border authorities should be defined as being non systematic.**
- (31) Border surveillance at sea is considered one of the coastguard functions performed in the Union maritime domain. National authorities carrying out coast guard functions are also responsible for a wide range of tasks, which may include, but would not be limited to, maritime safety, security, search and rescue, border control, fisheries control, customs control, general law enforcement and environmental protection. The broad scope of coastguard functions brings them under the remit of different Union policies which should seek synergies to achieve more effective and efficient results.



- (32) In addition to the Union cooperation on coastguard functions among the European Border and Coast Guard Agency established by Regulation (EU) .../2019 [EBCG] 2016/1624, the European Maritime Safety Agency established by Regulation (EC) 1406/2002 of the European Parliament and of the Council<sup>32</sup> and the European Fisheries Control Agency established by Council Regulation (EC) No 768/2005<sup>33</sup>, improved coherence of the activities in the maritime domain should also be achieved at national level. Synergies between the various actors in the maritime environment should be in line with European integrated border management and maritime security strategies.
- (33) To strengthen the complementarity and to reinforce the consistency of maritime activities as well as to avoid duplication of efforts and to alleviate budgetary constraints in an area of costly activities such as the maritime domain, the instrument should support maritime operations of multipurpose character, *including land, aerial and maritime means*, where the *primary purpose* ~~main objective~~ is *European integrated border management* ~~border surveillance~~ but other objective could additionally be pursued simultaneously.
- (33a) In an effort to strengthen complementarities between the Border Management and Visa Instrument, the Internal Security Fund and the Asylum, Migration and Integration Fund, the instrument established by this Regulation should be able to finance multipurpose equipment and ICT systems of which the primary purpose is in accordance with this Regulation but which also contribute to the achievement of the objectives of the Internal Security Fund established by Regulation (EU) No ... and the Asylum, Migration and Integration Fund established by Regulation (EU) No ...***

<sup>32</sup> Regulation (EC) No 1406/2002 of the European Parliament and of the Council of 27 June 2002 establishing a European Maritime Safety Agency (OJ L 208, 5.8.2002, p. 1).

<sup>33</sup> Council Regulation (EC) No 768/2005 of 26 April 2005 establishing a Community Fisheries Control Agency and amending Regulation (EEC) No 2847/93 establishing a control system applicable to the common fisheries policy (OJ L 128, 21.5.2005, p. 1).

- (34) Measures in and in relation to third countries supported through the instrument should be implemented in full synergy and coherence with and should complement other actions outside the Union supported through the Union's external financing instruments. In particular, in implementing such actions, full coherence should be sought with the principles and general objectives of the Union's external action and foreign policy related to the country or region in question. In relation to the external dimension, the instrument should target support to enhance cooperation with third countries and to reinforce key aspects of their border surveillance and border management capabilities in areas of interest to the Union's migration policy and Union's security objectives. **In that context, a significant part of the funding from the thematic facility should be used to support actions in or in relation to third countries.** *In its conclusions of 28 June 2018, the European Council underlined the need for flexible instruments, allowing for fast disbursement, to combat illegal migration.*
- (35) Funding from the Union budget should concentrate on activities where Union intervention can bring added value as compared to actions by Member States alone. As the Union is in a better position than Member States to provide a framework for expressing Union solidarity in border control, common visa policy and the management of migration flows, and to provide a platform for the development of common IT systems underpinning those policies, financial support provided under this Regulation will contribute in particular to strengthening national and Union capabilities in those areas.
- (36) A Member State may be deemed not to be compliant with the relevant Union *acquis*, including as regards the use of operating support under this instrument, if it has failed to fulfil its obligations under the Treaties in the areas of border management and visa, if there is a clear risk of a serious breach by the Member State of the Union's values when implementing the *acquis* on border management and visa or if an evaluation report under the Schengen evaluation and monitoring mechanism has identified deficiencies in the relevant area.
- (37) The instrument should reflect the need for increased flexibility and simplification while respecting requirements in terms of predictability, and ensuring a fair and transparent distribution of resources to meet the objectives laid down in this Regulation.

- (38) This Regulation should establish the initial amounts for Member States' programmes calculated on the basis of criteria laid down in Annex I, which reflect the length and the threat levels at land and sea border sections, the workload at the airports and the consulates as well as the number of consulates. **In view of the special needs of those Member States who have experienced the highest number of asylum applications per capita in 2018 and 2019, it is appropriate to increase the fixed amounts for Cyprus, Malta and Greece.**
- (39) These initial amounts will form a basis for Member States' long term investments. To take account of changes in the baseline situation, such as the pressure on the Union external border and the workload at the external borders and at consulates, an additional amount will be allocated to the Member States at mid-term and will be based on the latest available statistical data as set out in the distribution key ~~taking into account the state of programme implementation.~~
- (40) As challenges in the area of border management and visas are constantly evolving there is a need to adapt the allocation of funding to the changes in migration flows, pressure at the border and security threats and steer funding towards the priorities with the highest added value for the Union. To respond to pressing needs, changes in policy and Union priorities and to steer funding towards actions with a high level of added value for the Union, part of the funding will be periodically allocated to specific actions, Union actions and emergency assistance, via a thematic facility. ***The financial envelope allocated to the thematic facility will also serve to reinforce programmes.***
- (41) Member States should be encouraged to use part of their programme allocation to fund the actions listed in Annex IV by benefiting from a higher Union contribution.
- (42) The instrument should contribute to supporting operating costs related to border management, common visa policy and large-scale IT systems and should thereby enable Member States to maintain capabilities which are crucial for the Union as a whole. Such support consists of full reimbursement of specific costs related to the objectives of the instrument and should form an integral part of the Member States' programmes.

- (43) Part of the available resources under the instrument could also be allocated to Member States' programmes for the implementation of specific actions in addition to their initial allocation. These specific actions should be identified at Union level and should concern actions which require cooperative effort or actions necessary to address developments in the Union which require additional funding to be made available to one or more Member States, such as the purchase through the national programmes of Member States of technical equipment needed by the European Border and Coast Guard Agency to perform its operational activities, the modernisation of the processing of visa applications, the development of new large-scale IT systems and the setting-up of interoperability between those systems. These specific actions will be defined by the Commission in its work programmes.
- (44) To complement the implementation of the policy objective of this instrument at national level through Member States' programmes, the instrument should also provide support for actions at Union level. Such actions should serve overall strategic purposes within the scope of intervention of the instrument relating to policy analysis and innovation, transnational mutual learning and partnerships and the testing of new initiatives and actions across the Union.
- (45) In order to strengthen the Union's capacity to immediately address unforeseen or disproportionate migratory pressure, in particular at those border sections where the impact level has been identified in line with Regulation (EU) No 1052/2013 of the European Parliament and of the Council<sup>34</sup> as such that it jeopardises the functioning of the Schengen area as a whole, as well as pressure on the visa sections of Member States' consulates or risks to border security, it should be possible to provide emergency assistance in accordance with the framework set out in this Regulation.

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<sup>34</sup> Regulation (EU) No 1052/2013 of the European Parliament and of the Council of 22 October 2013 establishing the European Border Surveillance System (Eurosur) (OJ L 295, 6.11.2013, p. 11).

(46) The policy objective of this instrument will be also addressed through financial instruments and budgetary guarantee under the policy window(s) [...] of the InvestEU Fund. Financial support should be used to address market failures or sub-optimal investment situations, in a proportionate manner and actions should not duplicate or crowd out private financing or distort competition in the internal market. Actions should have a clear European added value.

***(46a) Blending operations have a voluntary nature and are operations supported by the Union budget combining repayable and/or non-repayable forms of support from the Union budget with repayable forms of support from promotional/ development or other public finance institutions, as well as from commercial finance institutions and investors.***

(47) This Regulation lays down a financial envelope for the entire instrument which is to constitute the prime reference amount, within the meaning of [point 17 of the Interinstitutional Agreement of 2 December 2013 between the European Parliament, the Council and the Commission on budgetary discipline, on cooperation in budgetary matters and on sound financial management]<sup>35</sup>, for the European Parliament and the Council during the annual budgetary procedure.

(48) ***Regulation (EU, Euratom) No 2018/1046 of the European Parliament and of the Council*** ~~Regulation (EU, Euratom) No .../... [new Financial Regulation] ('Financial Regulation')~~<sup>36</sup> applies to this instrument. It lays down rules on the implementation of the Union budget, including the rules on grants, prizes, procurement, indirect ~~management, implementation, financial assistance,~~ financial instruments, ~~and~~ budgetary guarantees, financial assistance and the reimbursement of external experts. In order to ensure coherence in the implementation of Union funding programmes, the Financial Regulation is to apply to the actions to be implemented in direct or indirect management under the instrument.

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<sup>35</sup> OJ C , , p. .

<sup>36</sup> ***Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012 (OJ L 193, 30.7.2018, p. 1***

- (49) For the purpose of implementation of actions under shared management, the instrument should form part of a coherent framework consisting of this Regulation, **Regulation (EU, Euratom) No 2018/1046** ~~the Financial Regulation~~ and Regulation (EU) No .../... [CPR].
- (50) Regulation (EU) No .../... [CPR] establishes the framework for action by the European Regional Development Fund (ERDF), the European Social Fund Plus (ESF+), the Cohesion Fund, the European Maritime and Fisheries Fund (EMFF), the Asylum ~~and~~ Migration **and Integration** Fund (AMIF), the Internal Security Fund (ISF) and the instrument for border management and visa (BMVI), as a part of the Integrated Border Management Fund (IBMF), and it lays down, in particular, the rules concerning programming, monitoring and evaluation, management and control for EU funds implemented under shared management. Additionally it is necessary to specify the objectives of the instrument for border management and visa in this Regulation, and to lay down specific provisions concerning activities that may be financed through this instrument.

**(50a) A pre-financing scheme for the instrument is set out in Article 84 of Regulation EU.../...[CPR] with a specific pre-financing rate set out in this Regulation. In addition, in order to ensure a prompt reaction to an emergency situation, it is appropriate to set up a specific pre-financing rate for emergency assistance. The pre-financing scheme should ensure that a Member State has the means to provide support to beneficiaries from the start of the implementation of the programme.**

- (51) The types of financing and the methods of implementation under this Regulation should be chosen on the basis of their ability to achieve the specific objectives of the actions and to deliver results, taking into account, in particular, the costs of controls, the administrative burden, and the expected risk of non-compliance. This should include consideration of the use of lump sums, flat rates and unit costs, as well as financing not linked to costs as referred to in Article 125(1) of the Financial Regulation.

(52) In accordance with **Regulation (EU, Euratom) No 2018/1046**, ~~(new Financial Regulation)~~, Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council<sup>37</sup>, Council Regulation (Euratom, EC) No 2988/95<sup>38</sup>, Council Regulation (Euratom, EC) No 2185/96<sup>39</sup> and Council Regulation (EU) 2017/1939<sup>40</sup>, the financial interests of the Union are to be protected through proportionate measures, including the prevention, detection, correction and investigation of irregularities **including** ~~and~~ fraud, the recovery of funds lost, wrongly paid or incorrectly used and, where appropriate, the imposition of administrative sanctions. In particular, in accordance with Regulation (EU, Euratom) No 883/2013 and Regulation (Euratom, EC) No 2185/96, the European Anti-Fraud Office (OLAF) may carry out administrative investigations, including on-the-spot checks and inspections, with a view to establishing whether there has been fraud, corruption or any other illegal activity affecting the financial interests of the Union. In accordance with Regulation (EU) 2017/1939, the European Public Prosecutor's Office ("**the EPPO**") may investigate and prosecute **offences against fraud and other criminal offences affecting the financial interests of the Union's financial interests**, as provided for in Directive (EU) 2017/1371 of the European Parliament and of the Council<sup>41</sup>. In accordance with the **Regulation (EU, Euratom) No 2018/1046**, any person or entity receiving Union funds is to **fully** cooperate ~~fully~~ in the protection of the Union's financial interests, to grant the necessary rights and access to the Commission, OLAF, the EPPO **in respect of those Member States participating in enhanced cooperation pursuant to Regulation (EU) 2017/1939**, and the European Court of Auditors (ECA), and to ensure that any third parties involved in the implementation of Union funds grant equivalent rights.

<sup>37</sup> Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) and repealing Regulation (EC) No 1073/1999 of the European Parliament and of the Council and Council Regulation (Euratom) No 1074/1999, (OJ L 248, 18.9.2013, p. 1).

<sup>38</sup> Council Regulation (Euratom, EC) No 2988/95 of 18 December 1995 on the protection of the European Communities' financial interests (OJ L 312, 23.12.95, p. 1).

<sup>39</sup> Council Regulation (Euratom, EC) No 2185/96 of 11 November 1996 concerning on-the-spot checks and inspections carried out by the Commission in order to protect the European Communities' financial interests against fraud and other irregularities (OJ L 292, 15.11.1996, p. 2).

<sup>40</sup> Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office ('the EPPO') (OJ L 283, 31.10.2017, p. 1).

<sup>41</sup> Directive (EU) 2017/1371 of the European Parliament and of the Council of 5 July 2017 on the fight against fraud to the Union's financial interests by means of criminal law (OJ L 198, 28.7.2017, p. 29).

- (53) Horizontal financial rules adopted by the European Parliament and the Council on the basis of Article 322 of the Treaty on the Functioning of the European Union apply to this Regulation. These rules are laid down in **Regulation (EU, Euratom) No 2018/1046** ~~the Financial Regulation~~ and determine in particular the procedure for establishing and implementing the budget through grants, procurement, prizes, indirect implementation, and provide for checks on the responsibility of financial actors. Rules adopted on the basis of Article 322 TFEU also concern the protection of the Union's budget in case of generalised deficiencies as regards the rule of law in the Member States, as the respect for the rule of law is an essential precondition for sound financial management and effective EU funding ***other conditionalities to protect the budget [and the European Union Recovery Instrument (the 'European Recovery Instrument')]***.<sup>42</sup>
- (54) Pursuant to Article 94 of Council Decision 2013/755/EU<sup>43</sup>, persons and entities established in overseas countries and territories (OCTs) are eligible for funding subject to the rules and objectives of the instrument and possible arrangements applicable to the Member State to which the relevant overseas country or territory is linked.
- (55) Pursuant to Article 349 of the TFEU and in line with the Commission Communication *A stronger and renewed strategic partnership with the EU's outermost regions*, endorsed by the Council in its conclusion of 12 April 2018, the relevant Member States should ensure that their national programmes address emerging threats the outermost regions are confronted with. The instrument supports these Member States with adequate resources to help the outermost regions as appropriate.

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<sup>42</sup> ***This recital may have to be updated pending the outcome of negotiations on the conditionality regime.***

<sup>43</sup> Council Decision 2013/755/EU of 25 November 2013 on the association of the overseas countries and territories with the European Union (Overseas Association Decision) (OJ L 344, 19.12.2013, p. 1).



(56) Pursuant to paragraph 22 and 23 of the Interinstitutional Agreement ~~for~~ *of 13 April 2016 on Better Law-Making of 13 April 2016*<sup>44</sup>, there is a need to ***this instrument should be*** evaluated ~~this instrument~~ on the basis of information collected ~~through~~ ***in accordance with*** specific monitoring requirements, while avoiding ~~overregulation and~~ ***an*** administrative burden, in particular on Member States, ***and overregulation***. ~~These~~ ***Those*** requirements, where appropriate, ~~can~~ ***should*** include measurable indicators, as a basis for evaluating the effects of the instrument on the ground. In order to measure the achievements of the instrument, indicators and related targets should be established in relation to each specific objective of the instrument.

***(56a) For the purpose of the implementation of the programmes with a view to achieving the objectives of the instrument for financial support for border management and visa, it is necessary to process certain personal data of participants in operations supported by the instrument. The personal data should be processed for the common indicators, for monitoring, evaluation, control and audit and, where applicable, for determining the eligibility of participants. The processing of personal data should be done in accordance with Regulation (EU) 2016/679 of the European Parliament and of the Council.***<sup>45</sup>

(57) Reflecting the importance of tackling climate change in line with the Union's commitments to implement the Paris Agreement and the United Nations Sustainable Development Goals, this instrument will contribute to mainstream climate actions and to the achievement of an overall target of ~~25~~ ***30*** % of the EU budget expenditures supporting climate objectives. Relevant actions will be identified during the preparation and implementation of the instrument, and reassessed in the context of the relevant evaluations and review processes.

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<sup>44</sup> Interinstitutional Agreement between the European Parliament, the Council of the European Union and the European Commission on Better Law-Making of 13 April 2016; OJ L 123, 12.5.2016, p. 1–14.

<sup>45</sup> ***Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (OJ L 119, 4.5.2016, p. 1).***

**(57a) Regulation (EU) No 514/2014 or any act applicable to the 2014–2020 programming period should continue to apply to programmes and projects supported by the Fund under the 2014–2020 programming period. Since the implementation period of Regulation (EU) No 514/2014 extends over to the programming period covered by this Regulation and in order to ensure continuity of implementation of certain projects approved by that Regulation, phasing provisions should be established. Each individual phase of the phased project should be implemented in accordance with the rules of the programming period under which it receives funding.**

(58) Through the indicators and financial reporting, the Commission and the Member States should monitor the implementation of the instrument, in accordance with the relevant provisions of Regulation (EU) No .../... [CPR] and this Regulation.

(59) In order to supplement and amend non-essential elements of this Regulation the power to adopt acts in accordance with Article 290 the Treaty on the Functioning of the European Union should be delegated to the Commission in respect of the list actions eligible for higher co-financing as listed in Annex IV, operating support and in order to further develop the common monitoring and evaluation framework. It is of particular importance that the Commission carries out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement on Better Law Making of 13 April 2016<sup>46</sup>.

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<sup>46</sup> OJ L 123, 12.5.2016, p. 1.

- (60) In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission. These powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council<sup>47</sup>. The examination procedure should be used for implementing acts that lay down common obligations on Member States, in particular on the provision of information to the Commission, ~~and the advisory procedure should be used for the adoption of implementing acts relating to the modalities of providing information to the Commission in the framework of programming and reporting, given their purely technical nature.~~
- (61) Participation by a Member State in this instrument should not coincide with its participation in a temporary financial instrument of the Union which supports the beneficiary Member States to finance, among others, actions at new external borders of the Union for the implementation of the Schengen *acquis* on borders and visas and external border control.
- (62) As regards Iceland and Norway, this Regulation constitutes a development of the Schengen *acquis* within the meaning of the Agreement concluded by the Council of the European Union and the Republic of Iceland and the Kingdom of Norway concerning the latter's association with the implementation, application and development of the Schengen *acquis*<sup>48</sup> which falls within the areas referred to in Article 1, Points A and B of Council Decision 1999/437/EC<sup>49</sup>.

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<sup>47</sup> OJ L 55, 28.2.2011, p. 13.

<sup>48</sup> OJ L 176, 10.7.1999, p. 36.

<sup>49</sup> Council Decision 1999/437/EC of 17 May 1999 on certain arrangements for the application of the Agreement concluded by the Council of the European Union and the Republic of Iceland and the Kingdom of Norway concerning the association of those two States with the implementation, application and development of the Schengen *acquis* (OJ L 176, 10.7.1999, p. 31).

- (63) As regards Switzerland, this Regulation constitutes a development of provisions of the Schengen *acquis* within the meaning of the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis*<sup>50</sup> which falls within the area referred to in Article 1, Points A and B of Decision 1999/437/EC read in conjunction with Article 3 of Council Decision 2008/146/EC<sup>51</sup>.
- (64) As regards Liechtenstein, this Regulation constitutes a development of the provisions of the Schengen *acquis* within the meaning of the Protocol between the European Union, the European Community, the Swiss Confederation and the Principality of Liechtenstein on the accession of the Principality of Liechtenstein to the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis*<sup>52</sup> which falls within the area referred to in Article 1, Points A and B of Decision 1999/437/EC read in conjunction with Article 3 of Council Decision 2011/350/EU<sup>53</sup>.

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<sup>50</sup> OJ L 53, 27.2.2008, p. 52.

<sup>51</sup> Council Decision 2008/146/EC of 28 January 2008 on the conclusion, on behalf of the European Community, of the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis* (OJ L 53, 27.2.2008, p. 1).

<sup>52</sup> OJ L 160, 18.6.2011, p. 21.

<sup>53</sup> Council Decision 2011/350/EU of 7 March 2011 on the conclusion, on behalf of the European Union, of the Protocol between the European Union, the European Community, the Swiss Confederation and the Principality of Liechtenstein on the accession of the Principality of Liechtenstein to the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis*, relating to the abolition of checks at internal borders and movement of persons (OJ L 160, 18.6.2011, p. 19).

*(64a) In order to specify the nature and modalities of the participation in the instrument by countries associated with the implementation, application and development of the Schengen acquis, further arrangements should be concluded between the Union and those countries under the relevant provisions of their respective association agreements. Such arrangements should constitute international agreements within the meaning of Article 218 TFEU. With a view to minimize a possible gap between the moment when this Instrument will become binding on the country concerned and the entry into force of the arrangements, it is appropriate to start the negotiations on such arrangements as soon as possible after the respective country has notified to the Council and the Commission its decision to accept the contents of this Instrument and to implement it in its internal legal order. The conclusion of such arrangements should take place after the country concerned has informed in writing upon fulfilment of all its internal requirements.*

(65) In accordance with Articles 1 and 2 of Protocol No 22 on the position of Denmark, annexed to TEU and TFEU, Denmark is not taking part in the adoption of this Regulation and is not bound by it or subject to its application. Given that this Regulation builds upon the Schengen *acquis*, Denmark should, in accordance with Article 4 of that Protocol, decide within a period of six months after the Council has decided on this Regulation whether it will implement this Regulation in its national law.

(66) This Regulation constitutes a development of the provisions of the Schengen *acquis* in which Ireland does not take part, in accordance with Council Decision 2002/192/EC<sup>54</sup>. Ireland is therefore not taking part in its adoption and is not bound by it or subject to its application.

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<sup>54</sup> Council Decision 2002/192/EC of 28 February 2002 concerning Ireland's request to take part in some of the provisions of the Schengen *acquis* (OJ L 64, 7.3.2002, p. 20).

~~*(66a) This Regulation constitutes a development of the provisions of the Schengen acquis in which the United Kingdom does not take part, in accordance with Council Decision 2000/365/EC<sup>55</sup>. The United Kingdom is therefore not taking part in its adoption and is not bound by it or subject to its application.*~~

(67) It is appropriate to align the period of application of this Regulation with that of Council Regulation (EU, Euratom) .../... [Multiannual Financial Framework Regulation]<sup>56</sup>,

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<sup>55</sup> *Council Decision 2000/365/EC of 29 May 2000 concerning the request of the United Kingdom of Great Britain and Northern Ireland to take part in some of the provisions of the Schengen acquis (OJ L 131, 1.6.2000, p. 43).*

<sup>56</sup> OJ L [...], [...], p.

HAVE ADOPTED THIS REGULATION:

## CHAPTER I

### GENERAL PROVISIONS

#### *Article 1*

##### **Subject matter**

1. This Regulation establishes the instrument for financial support for border management and visa ('the instrument') as part of the Integrated Border Management Fund ('the Fund') ***for the period from 1 January 2021 to 31 December 2027.***
2. Jointly with Regulation (EU) No .../... [Customs Control Equipment Fund], establishing as part of the [Integrated Border Management Fund]<sup>57</sup> the instrument for financial support for customs control equipment, this Regulation establishes the Fund.
3. It lays down the objectives of the instrument, the budget for the period 2021-2027, the forms of Union funding and the rules for providing such funding.

#### *Article 2*

##### **Definitions**

For the purposes of this Regulation the following definitions shall apply:

- (1) 'blending operation' means actions supported by the Union budget, including within blending facilities pursuant to Article 2(6) of ***Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council*** ~~the Financial Regulation~~, combining non-repayable forms of support and/or financial instruments from the Union budget with repayable forms of support from development or other public finance institutions, as well as from commercial finance institutions and investors;

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<sup>57</sup> OJ L [...], [...], p.

- (2) ‘border crossing point’ means any crossing point authorised by the competent authorities for the crossing of external borders as notified in accordance with Article 2(8) of Regulation (EU) 2016/399 of the European Parliament and of the Council<sup>58</sup>;
- (3) ‘European integrated border management’ means the components listed in Article 3 4 of Regulation (EU) .../2019 [EBCG] 2016/1624;
- (4) ‘external borders’ means the borders of the Member States: land borders, including river and lake borders, sea borders as well as their airports, river ports, sea ports and lake ports to which the provisions of Union law on the crossing of external borders apply, including those internal borders at which the controls have not been lifted yet;
- (5) ‘external border section’ means the whole or a part of the external land or sea border of a Member State as defined by *point (f) of Article 3 of Regulation (EU) No 1052/2013*;
- (6) ‘hotspot area’ means the hotspot area defined in Article 2(23) ~~2(10)~~ of Regulation (EU) .../2019 [EBCG] 2016/1624;

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<sup>58</sup> Regulation (EU) 2016/399 of the European Parliament and of the Council of 9 March 2016 on a Union Code on the rules governing the movement of persons across borders (Schengen Borders Code) (OJ L 77, 23.3.2016, p. 1).



- (7) ‘internal borders at which the controls have not been lifted yet’ means:
- (a) the common border between a Member State fully implementing the Schengen *acquis* and a Member State bound to apply the Schengen *acquis* in full, in conformity with its Act of Accession, but for which the relevant Council Decision authorising it to fully apply that *acquis* has not yet entered into force;
  - (b) the common border between two Member States bound to apply the Schengen *acquis* in full, in conformity with their respective Acts of Accession, but for which the relevant Council Decision authorising them to fully apply that *acquis* has not yet entered into force.
- (8) ***‘emergency situation’ means an urgent and exceptional pressure where a large or disproportionate number of third-country nationals have crossed, are crossing or are expected to cross the external borders of one or more Member States and/or where incidents related to illegal immigration or cross-border crime occur at external borders of one or more Member States, in particular at border sections with decisive impact on border security to such an extent that they risk jeopardising the functioning of the Schengen area, or any other situation in respect of which it is duly substantiated that it requires urgent action.***

- (9) *‘large-scale operating equipment’ means air- or sea-borne or land-based means of transport, surveillance or other stationary or mobile items of equipment that cannot be hand-held.*

### *Article 3*

#### **Objectives of the instrument**

1. As part of the Integrated Border Management Fund, the policy objective of the instrument shall be ensuring strong and effective European integrated border management at the external borders, while safeguarding the free movement of persons within it, in full compliance with the Union’s commitments on fundamental rights, thereby contributing to guaranteeing a high level of security in the Union.
2. Within the policy objective set out in paragraph 1, the instrument shall contribute to the following specific objectives:
  - (a) supporting effective European integrated border management at the external borders implemented by the European Border and Coast Guard as a shared responsibility of the European Border and Coast Guard Agency and of the national authorities responsible for border management, to facilitate legitimate border crossings, to prevent and detect illegal immigration and cross-border crime and to effectively manage migratory flows;
  - (b) supporting the common visa policy to facilitate legitimate travel and prevent migratory and security risks.
3. Within the specific objectives set out in paragraph 2, the instrument shall be implemented through the implementation measures listed in Annex II.

## Article 4

### Scope of support

1. Within the objectives referred to in Article 3 and in line with the implementation measures listed in Annex II, the instrument shall ~~in particular~~ support the actions *such as those* listed in Annex III.
2. To achieve the objectives of this Regulation, the instrument may support actions in line with Union priorities as referred to in Annex III in relation to and in third countries, where appropriate, in accordance with Article *16a 5*.
- 2a. *Equipment and ICT systems financed under this Instrument may be used for customs control, for maritime operations of multipurpose character and for achieving the objectives of the Internal Security Fund established by Regulation (EU) No ...[ISF] and of the Asylum, Migration and Integration Fund established by Regulation (EU) No ...[AMIF], as long as the primary purpose of those equipment and ICT systems is in accordance with this Regulation and double-financing is avoided.*
3. The following actions shall not be eligible:
  - (a) the actions referred to in paragraph 1(a) of Annex III at those internal borders at which controls have not been lifted yet;
  - (b) the actions related to the temporary and exceptional reintroduction of border control at internal borders as referred to in Regulation (EU) 2016/399;
  - ~~(c) as regards the control of goods:
    - ~~(1) actions of which the exclusive aim or effect is control of goods;~~
    - ~~(2) purchase, maintenance or upgrading of equipment, excluding means of transport, of which one of the aims or effects is control of goods;~~
    - ~~(3) other actions under this Regulation of which the primary aim or effect is the control of goods.~~~~

(c) *the actions of which the primary purpose is customs control.*

4. Where an emergency situation occurs, non-eligible actions referred to in ~~this~~ paragraph 3 may be considered eligible.

~~Article 5~~

**Eligible entities**

~~1. The following entities may be eligible:~~

~~(a) legal entities established in any of the following countries:~~

~~(i) a Member State or an overseas country or territory linked to it;~~

~~(ii) third country listed in the work programme under the conditions specified therein.~~

~~(b) any legal entity created under Union law or any international organisation.~~

~~2. Natural persons are not eligible.~~

~~3. Legal entities established in a third country are exceptionally eligible to participate where this is necessary for the achievement of the objectives of a given action.~~

~~4. Legal entities participating in consortia of at least two independent entities, established in different Member States or overseas countries or territories linked to those states or in third countries, are eligible.~~

## CHAPTER II

### FINANCIAL AND IMPLEMENTATION FRAMEWORK

#### SECTION 1

##### *COMMON PROVISIONS*

###### *Article 6*

###### **General principles**

1. Support provided under this Regulation shall complement national, regional and local interventions, and shall focus on bringing added value to the objectives of this Regulation.
2. The Commission and the Member States shall ensure that the support provided under this Regulation and by the Member States is consistent with the relevant activities, policies and priorities of the Union and is complementary to other Union instruments.
3. The instrument shall be implemented in shared, direct or indirect management in accordance with Articles 62 (1)(a), (b) and (c) of **Regulation (EU, Euratom) 2018/1046** ~~the Financial Regulation~~.

###### *Article 7*

###### **Budget**

1. The financial envelope for the implementation of the instrument for the period 2021-2027 shall be EUR ~~8 018 000 000~~ **5 241 000 000** in current prices.

2. The financial envelope shall be used as follows:
  - (a) EUR ~~4 811 000 000~~ **3 668 000 000** shall be allocated to the programmes implemented under shared management, of which EUR ~~157 200 000~~ **200 568 000** for the Special Transit Scheme referred to in Article 16, implemented under shared management;
  - (b) EUR ~~3 207 000 000~~ **1 573 000 000** shall be allocated to the thematic facility.
3. Up to 0.52 % of the financial envelope shall be allocated for technical assistance at the initiative of the Commission for the implementation of the instrument.
4. Under the relevant provisions of their *respective* association agreements, arrangements shall be made in order to specify the nature and modalities of the participation *in this Instrument* by countries associated with the implementation, application and development of the Schengen *acquis*. *The negotiations on those arrangements shall start as soon as possible after the respective country has notified, in accordance with the relevant association agreement, its decision to accept the contents of this Instrument and to implement it in its internal legal order.* The financial contributions from those countries shall be added to the overall resources available from the Union *financial envelope* ~~budget~~ referred to in paragraph 1.
- 5. Without prejudice to the resources allocated to Member States under shared management and transferrable in accordance with Article 21 of Regulation (EU) XX [CPR], up to 5% in total of the initial national allocation from any of the funds of the Common Provisions Regulation under shared management may, at the request of Member States, be transferred to the instrument under direct or indirect management. The Commission shall implement those resources directly in accordance with Article 62(1)(a) of the Financial Regulation or indirectly in accordance with Article 62(1)(c). Those resources shall be used for the benefit of the Member State concerned.**

## Article 8

### General provisions on the implementation of the thematic facility

1. The financial envelope referred to in Article 7(2)(b) shall be allocated flexibly through the thematic facility using shared, direct and indirect management as set out in work programmes. Funding from the thematic facility shall be used for its components:
  - (a) specific actions;
  - (b) Union actions; ~~and~~
  - (c) **and** emergency assistance.

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

2. Funding from the thematic facility shall address priorities with a high added value to the Union or be used to respond to urgent needs, in line with agreed Union priorities as outlined in Annex II. **A significant part of the funding from the thematic facility shall be used for supporting actions in or in relation to third countries in order to contribute to the protection of the external borders and external migration management.**
3. When funding from the thematic facility is granted in direct or indirect management to Member States, it shall be ensured that selected projects are not affected by a reasoned opinion by the Commission in respect of an infringement under Article 258 TFEU that puts at risk the legality and regularity of expenditure or the performance of projects.

4. When funding from the thematic facility is implemented in shared management, the Commission shall, for the purposes of Article 18 and Article 19(2) of Regulation (EU) No .../... [CPR], assess whether the foreseen actions are not affected by a reasoned opinion by the Commission in respect of an infringement under Article 258 TFEU that puts at risk the legality and regularity of expenditure or the performance of the projects.
5. The Commission shall establish the overall amount made available for the thematic facility under the annual appropriations of the Union budget.
6. The Commission shall **by means of implementing acts** adopt financing decisions as referred to in Article 110 of **Regulation (EU, Euratom) 2018/1046** ~~the Financial Regulation~~ for the thematic facility, identifying the objectives and the actions to be supported and specifying the amounts for each of its components, as referred to in paragraph 1. Financing decisions shall set out, where applicable, the overall amount reserved for blending operations. ***Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 30(2).***
7. Following the adoption of a financing decision as referred to in paragraph ~~6~~ 3, the Commission may amend the programmes implemented under shared management accordingly.
8. The financing decisions may be annual or multiannual and may cover one or more components of the thematic facility.



## SECTION 2

### *SUPPORT AND IMPLEMENTATION UNDER SHARED MANAGEMENT*

#### *Article 9*

##### **Scope**

1. This section applies to the part of the financial envelope referred to in Article 7(2)(a), and the additional resources to be implemented under shared management according to the Commission decision for the thematic facility referred to in Article 8.
2. Support under this section shall be implemented under shared management in accordance with Article 63 of *Regulation (EU, Euratom) 2018/1046* ~~the Financial Regulation and Regulation (EU) No .../... [CPR]~~.

#### *Article 10*

##### **Budgetary resources**

1. Resources referred to in Article 7(2)(a) shall be allocated to the national programmes implemented by Member States under shared management ('the programmes') indicatively as follows:
  - (a) EUR ~~4 009 000 000~~ **3 057 000 000** to the Member States in accordance with the criteria in Annex I;
  - (b) EUR ~~802 000 000~~ **611 000 000** to the Member States for the adjustment of the allocations for the programmes as referred to in ~~in~~ Article 13(1).
2. ~~Where the amount referred to in paragraph 1(b) is not allocated, the remaining amount may be added to the amount referred to in Article 7(2)(b).~~

Article 10a

Pre-financing

1. In accordance with Article 84(3) of Regulation EU.../...[CPR], the pre-financing for the instrument shall be paid in yearly instalments before 1 July of each year, subject to the availability of funds, as follows:

(a) 2021: 5%;

(b) 2022: 5%;

(c) 2023: 5%;

(d) 2024: 5%;

(e) 2025: 5%;

(f) 2026: 5%;

2. Where a programme is adopted after 1 July 2021, the earlier instalments shall be paid in the year of adoption.

Article 11

**Co-financing rates**

1. The contribution from the Union budget shall not exceed 75 % of the total eligible expenditure of a project.
2. The contribution from the Union budget may be increased to 90 % of the total eligible expenditure for projects implemented under specific actions.
3. The contribution from the Union budget may be increased to 90 % of the total eligible expenditure for the actions listed in Annex IV.

4. The contribution from the Union budget may be increased to 100 % of the total eligible expenditure for operating support, including the Special Transit Scheme.
5. The contribution from the Union budget may be increased to 100 % of the total eligible expenditure for emergency assistance.
- 5a. ***Within the limits set out in Article 30(5)(b)(v) of Regulation (EU) No [CPR], technical assistance of Member States may be financed up to 100 % of the Union budget contribution.***
6. The Commission decision approving a programme shall set the co-financing rate and the maximum amount of support from this instrument for the types of action referred to in paragraphs 1 to 5.
7. For each ***type of action*** ~~specific objective~~, the Commission decision ***approving a programme*** shall set out whether the co-financing rate for the ***type of action*** ~~specific objective~~ is to be applied to ***either of the following***:
  - (a) the total contribution, including the public and private contribution; ~~or~~
  - (b) public contribution only.

## *Article 12*

### **Programmes**

1. Each Member State shall ensure that the priorities addressed in its programme are consistent with and respond to the Union priorities and challenges in the area of border management and visa, and that they are fully in line with the relevant Union *acquis* and agreed Union priorities. In defining the priorities of their programmes, Member States shall ensure that the implementing measures as set out in Annex II are adequately addressed.

2. *At an early stage of the programming, ~~t~~The Commission shall **consult** ensure that the European Border and Coast Guard Agency and where appropriate, eu-LISA, **on the draft programmes, as regard the areas of their competence, to ensure consistency and complementarity of the actions of the agencies and those of the Member States regarding border management as well as to avoid overlaps and to achieve cost efficiency. The consultation shall be conducted in a timely manner without delaying the approval and implementation of the programmes.** are associated with the process of developing the programmes of Member States at an early stage, in so far as it falls within the agencies' competencies.*
- ~~3. It shall consult the European Border and Coast Guard Agency on the draft programmes with a specific emphasis on the activities included under operating support in line with Article 3(2)(a) to ensure consistency and complementarity of the actions of the Agency and those of the Member States regarding border management as well as to avoid double financing and to achieve cost efficiency.~~
4. The Commission may associate the European Border and Coast Guard Agency, and where appropriate, eu-LISA, with monitoring and evaluation tasks as referred to in Section 5, in particular in view of ensuring that the actions implemented with the support of the instrument are compliant with the relevant Union acquis and agreed Union priorities.
5. Following the adoption of recommendations within the scope of this Regulation in accordance with Regulation (EU) No 1053/2013, and the recommendations issued in the framework of carrying out vulnerability assessments in accordance with Regulation (EU) .../2019 [EBCG] 2016/1624, the Member State concerned shall examine, together with the Commission, the most appropriate approach to address these recommendations with the support of this instrument.
6. The Commission shall, where relevant, associate the European Border and Coast Guard Agency with the process of examination on the most appropriate approach to address the recommendations with the support of this instrument.

7. When implementing paragraph 5, the Member State concerned shall make the implementation of measures to address any identified deficiencies, especially measures to address serious deficiencies and non-compliant assessments, a priority for its programme.
8. Where necessary, the programme in question shall be amended to take into account the recommendations referred to in paragraph 5. Depending on the impact of the adjustment, the revised programme may be approved by the Commission.
9. In cooperation and consultation with the Commission and the European Border and Coast Guard Agency in accordance with the Agency's competencies, the Member State concerned may reallocate resources under its programme, including those programmed for operating support, with the aim of addressing the recommendations referred to in paragraph 5 which have financial implications.
10. Whenever a Member State decides to implement *new* projects with or in a third country with the support of the instrument, the Member State concerned shall ***approve the project after informing*** ~~consult~~ the Commission ~~prior to the start of the project~~.
11. Whenever a Member State decides to implement actions with or in a third country with the support of the instrument relating to monitoring, detection, identification, tracking, prevention and interception of unauthorised border crossings for the purpose of detecting, preventing and combating illegal immigration and cross-border crime or contributing to the protection and saving the lives of migrants, it shall ensure that it has notified the Commission of any bilateral or multilateral cooperation agreement with that third country in accordance with Article 20 of Regulation (EU) No 1052/2013.
12. As regards operating equipment, including means of transport, and communication systems required for effective and secure border control purchased with the support of this instrument, the following shall apply:

- (a) before launching the purchase procedures to acquire **large-scale** operating equipment, ~~including means of transport~~, and communication systems with the support of the instrument, the Member States shall ensure that this equipment complies with the standards ***in force prior to the start of the purchase procedure*** established by the European Border and Coast Guard Agency, where such standards exist, and shall verify with the European Border and Coast Guard Agency their technical specifications with the aim of ensuring interoperability of the assets used by the European Border and Coast Guard, ***unless agreed otherwise with the Agency***;
- (b) all large-scale operating equipment for border management, such as aerial and maritime means of transport and surveillance purchased by the Member States shall be registered in the technical equipment pool of the European Border and Coast Guard Agency in view of making these assets available in accordance with Article **64(9)** ~~39(8)~~ of Regulation (EU) .../2019 [EBCG] 2016/1624;
- ~~(c) Member States may decide to purchase items for multi-purpose maritime operations supported by the instrument, provided that these items when operated by the relevant national authorities are involved in border surveillance operations at least 60 % of the period of use for national purposes within a year. These items shall be registered at the technical equipment pool of the European Border and Coast Guard Agency in view of making these assets available in accordance with Article 39(8) of Regulation (EU) 2016/1624;~~
- (cd) in order to support the coherent capability development planning for the European Border and Coast Guard and the possible use of joint procurement, Member States shall communicate to the Commission as part of the reporting in line with Article 27 the available multiannual planning for the equipment expected to be purchased under the instrument. The Commission shall transmit this information to the European Border and Coast Guard Agency.

13. Training in the field of border management carried out with the support of this instrument shall be based on the relevant harmonised and quality-assured European education and common training standards for border and coast guarding, *where such standards exist*.
14. Member States *may* ~~shall~~ pursue ~~in particular~~ the actions listed in Annex IV. To address unforeseen or new circumstances or to ensure the effective implementation of funding, the Commission shall be empowered to adopt delegated acts in accordance with Article 29 to amend Annex IV.
15. Programming as referred to in Article 17(5) of Regulation (EU) No .../... [CPR] shall be based on the types of intervention set out in Table 1 of Annex VI.

## Article 13

### Mid-term review

1. In 2024 the Commission shall allocate to the programmes of Member States concerned the additional amount referred to in Article 10(1)(b) in accordance with the criteria referred to in paragraph 1(c) of and in paragraphs 2 to 11 of Annex I. The allocation shall be based on the latest available statistical data for the criteria referred to in paragraph 1(c) and in paragraphs 2 to 11 of Annex I. Funding shall be effective for the period as of the calendar year 2025.
- ~~2. If at least 10 % of the initial allocation of a programme referred to in Article 10(1)(a) has not been covered by interim payment applications submitted in accordance with Article 85 of Regulation (EU) No .../... [CPR], the Member State concerned shall not be eligible to receive the additional allocation for its programme referred to in paragraph 1.~~
3. The allocation of the funds from the thematic facility as from 2025 shall, where appropriate, take into account the progress made in achieving the milestones of the performance framework as referred to in Article 12 of Regulation (EU) No .../... [CPR] and identified implementation shortcomings.

## Article 14

### Specific actions

1. Specific actions are transnational or national projects in line with the objectives of this Regulation for which one, several or all Member States may receive an additional allocation to their programmes.



2. Member States may, in addition to their allocation calculated in accordance with Article 10(1), receive funding for specific actions, provided that it is consequently earmarked as such in the programme and is used to contribute to the implementation of the objectives of this Regulation.
3. This funding shall not be used for other actions in the programme except in duly justified circumstances and as approved by the Commission through the amendment of the programme.

### *Article 15*

#### **Operating support**

1. Operating support is a part of a Member State's allocation which may be used as support to the public authorities responsible for accomplishing the tasks and services which constitute a public service for the Union.
2. A Member State may use up to ~~30~~ **40** % of the amount allocated under the instrument to its programme to finance operating support to the public authorities responsible for accomplishing the tasks and services which constitute a public service for the Union.
3. Member States using operating support shall comply with the Union acquis on borders and visas.

4. Member States shall justify in the programme and in the ~~annual performance~~ reports as referred to in Article 27 the use of operating support to *contribute to the achievement of* the objectives of this Regulation. Before the approval of the programme, the Commission shall, following a consultation of the European Border and Coast Guard Agency, *and where appropriate, eu-LISA*, as regards the ~~Agency's~~ competencies in accordance with Article 12(~~2-3~~), assess the baseline situation in the Member States which have indicated their intention to use operating support, taking into account the information provided by those Member States and, where relevant, the information available in the light of Schengen evaluations and vulnerability assessments, including the recommendations following Schengen evaluations and vulnerability assessments.
5. Without prejudice to Article 4(3)(c), operating support shall be concentrated on specific tasks and services as laid down in Annex VII.
6. To address unforeseen or new circumstances or to ensure the effective implementation of funding, the Commission shall be empowered to adopt delegated acts in accordance with Article 29 to amend the specific tasks and services in Annex VII.

Article 16

**Operating support for the Special Transit Scheme**

1. The instrument shall provide support to compensate for foregone fees from visas issued for the purpose of transit and additional costs incurred in implementing the facilitated transit document (FTD) and the facilitated rail transit document (FRTD) scheme in accordance with Regulation (EC) No 693/2003 and Regulation (EC) No 694/2003, ***including investment in infrastructures.***
2. The resources allocated to Lithuania for the Special Transit Scheme pursuant to Article 7(2)(a) shall be made available as additional operating support for Lithuania, in line with the eligible actions for operating support within the programme, as referred to in Annex VII.
3. By way of derogation from Article 15(2), Lithuania may use the amount allocated to it in line with Article 7(2)(a) to finance operating support in addition to the amount defined in Article 15(2).
4. The Commission and Lithuania shall review the application of this Article in the event of changes which have an impact on the existence or functioning of the Special Transit Scheme.
5. ***Based on a motivated request, the resources allocated to Lithuania for the Special Transit Scheme referred to in Article 7(2)(a) should be reviewed, and where necessary adjusted, before the adoption of the last work programme for the thematic facility, within the limits of the budgetary resources referred to in Article 7(2)(b), through the thematic facility referred to in Article 8.***

## SECTION 3

### *SUPPORT AND IMPLEMENTATION UNDER DIRECT AND INDIRECT MANAGEMENT*

#### *Article 16a*

#### *Eligible entities*

1. *The following entities may be eligible:*
  - (a) *legal entities established in any of the following countries:*
    - (i) *a Member State or an overseas country or territory linked to it;*
    - (ii) *a third country listed in the work programme under the conditions specified therein.*
  - (b) *any legal entity created under Union law or any international organisation.*
2. *Natural persons are not eligible.*
3. *Legal entities established in a third country are exceptionally eligible to participate where this is necessary for the achievement of the objectives of a given action.*
4. *Legal entities participating in consortia of at least two independent entities, established in different Member States or in overseas countries or territories linked to those states or in third countries, are eligible.*

## Article 17

### Scope

Support under this section shall be implemented either directly by the Commission in accordance with point (a) of Article 62(1) of **Regulation (EU, Euratom) 2018/1046** ~~the Financial Regulation~~, or indirectly in accordance with point (c) of that Article.

## Article 18

### Union actions

1. Union actions are transnational projects or projects of particular interest to the Union, in line with the objectives of this Regulation.
2. At the Commission's initiative, the instrument may be used to finance Union actions concerning the objectives of this Regulation as referred to in Article 3 and in accordance with Annexes II and III.
3. Union actions may provide funding in any of the forms laid down in **Regulation (EU, Euratom) 2018/1046** ~~the Financial Regulation~~, in particular grants, prizes and procurement. They may also provide financing in the form of financial instruments within blending operations.
4. Grants implemented under direct management shall be awarded and managed in accordance with [Title VIII] of **Regulation (EU, Euratom) 2018/1046** ~~the Financial Regulation~~.
5. The evaluation committee assessing the proposals may be composed of external experts.
6. Contributions to a mutual insurance mechanism may cover the risk associated with the recovery of funds due by recipients and shall be considered a sufficient guarantee under **Regulation (EU, Euratom) 2018/1046** ~~the Financial Regulation~~. The provisions laid down in [Article X] of Regulation (EU) No .../... [Successor of the Regulation on the Guarantee Fund] shall apply.

*Article 19*

**Blending operations**

Blending operations decided under this instrument shall be implemented in accordance with the [InvestEU Regulation] and [Title X] of *Regulation (EU, Euratom) 2018/1046* ~~the Financial Regulation.~~

*Article 20*

**Technical assistance at the level of the Commission**

The instrument may support technical assistance measures implemented at the initiative of, or on behalf of, the Commission. Those measures may be financed at the rate of 100%.

*Article 21*

**Audits**

Audits on the use of the Union contribution carried out by persons or entities, including by other than those mandated by the Union institutions or bodies, shall form the basis of the overall assurance pursuant to Article 127 of *Regulation (EU, Euratom) 2018/1046* ~~the Financial Regulation.~~

Article 22

**Information, communication and publicity**

1. The recipients of Union funding shall acknowledge the origin ***of those funds*** and ensure the visibility of the Union funding, in particular when promoting the actions and their results, by providing coherent, effective and proportionate targeted information to multiple audiences, including the media and the public, ***except where it is restricted due to its classified or confidential nature, particularly concerning security, public order and the protection of personal data, according to the applicable law.***
2. The Commission shall implement information and communication actions relating to ~~this~~ ***the*** instrument, ~~its~~ ***to actions taken pursuant to the instrument*** ~~the~~ and ***to the results obtained.***

Financial resources allocated to ~~this~~ ***the*** instrument shall also contribute to the corporate communication on the political priorities of the Union, ***as insofar as they those priorities are related to the objectives of this Regulation referred to in Article 3.***

## SECTION 4

### *SUPPORT AND IMPLEMENTATION UNDER SHARED, DIRECT AND INDIRECT MANAGEMENT*

#### *Article 23*

#### **Emergency assistance**

1. The instrument shall provide financial assistance to address urgent and specific needs in the event of an emergency situation ~~resulting from an urgent and exceptional pressure where a large or disproportionate number of third-country nationals have crossed, are crossing or are expected to cross the external borders of one or more Member States, in particular at border sections where the impact level has been identified as such that it jeopardises the functioning of the whole Schengen area, or any other situation of urgent and exceptional pressure within the scope of this Regulation that requires immediate action.~~
2. Emergency assistance may take the form of grants awarded directly to the decentralised agencies.
3. Emergency assistance may be allocated to Member States' programmes in addition to their allocation calculated in accordance with Article 10(1), provided that it is consequently earmarked as such in the programme. This funding shall not be used for other actions in the programme except in duly justified circumstances and as approved by the Commission through the amendment of the programme. **Pre-financing for emergency assistance may amount to 95% of the Union contribution, subject to the availability of funds.**
4. Grants implemented under direct management shall be awarded and managed in accordance with [Title VIII] of *Regulation (EU, Euratom) 2018/1046* ~~the Financial Regulation.~~
5. ***The Commission shall regularly inform Member States about the available financial means for emergency assistance and the types of action which may be eligible.***



Article 24

**Cumulative, complementary and combined Alternative funding**

1. An action that has received a contribution under the instrument may also receive a contribution from any other Union programme, including Funds under shared management, provided that the contributions do not cover the same costs. The rules of each contributing Union programme shall apply to its respective contribution to the action. The cumulative funding shall not exceed the total eligible costs of the action and the support from the different Union programmes may be calculated on a pro-rata basis in accordance with the documents setting out the conditions for support.
2. Actions awarded a seal of Excellence certification under this Instrument by complying, or which comply with the following cumulative comparable conditions:
  - (a) they have been assessed in a call for proposals under the instrument;
  - (b) they comply with the minimum quality requirements of that call for proposals;
  - (c) they may not be financed under that call for proposals due to budgetary constraints,may receive support from the European Regional Development Fund, ~~the Cohesion Fund, or the European Social Fund+ or the European Agricultural Fund for Rural Development~~, in accordance with paragraph 5 of Article 67 of Regulation (EU) No .../... [CPR] ~~and Article 8 of Regulation (EU) No .../... [Financing, management and monitoring of the Common Agricultural Policy]~~, provided that such actions are consistent with the objectives of the programme concerned. The rules of the Fund or instrument providing support shall apply.

## SECTION 5

### *MONITORING, REPORTING AND EVALUATION*

#### **Sub-section 1 Common provisions**

##### *Article 25*

#### **Monitoring and reporting**

1. In compliance with its reporting requirements pursuant to Article **41(3)(h)(iii)** ~~[43(3)(h)(i)(iii)]~~ of **Regulation (EU, Euratom) 2018/1046** ~~the Financial Regulation~~, the Commission shall present to the European Parliament and the Council information on performance in accordance with Annex V.
  2. The Commission shall be empowered to adopt delegated acts in accordance with Article 29 to amend Annex V in order to make the necessary adjustments to the information on performance to be provided to the European Parliament and the Council.
  3. The indicators to report on progress of the instrument towards the achievement of the objectives of this Regulation are set out in Annex VIII. For output indicators, baselines shall be set at zero. The milestones set for 2024 and targets set for 2029 shall be cumulative.
- 3a. The Commission shall also report on the share of the thematic facility used for supporting actions in or in relation to third countries.**
4. The performance reporting system shall ensure that data for monitoring programme implementation and results are collected efficiently, effectively, and in a timely manner. To that end, proportionate reporting requirements shall be imposed on recipients of Union funds and, where relevant, the Member States.

5. In order to ensure effective assessment of the progress of the instrument towards the achievement of its objectives, the Commission shall be empowered to adopt delegated acts in accordance with Article 29 to amend Annex VIII to review and complement the indicators where necessary and to supplement this Regulation with provisions on the establishment of a monitoring and evaluation framework, including information to be provided by the Member States. *Any amendment to Annex VIII shall only start to apply in the first accounting year following the year of adoption of the delegated act.*

#### *Article 26*

#### **Evaluation**

1. The Commission shall carry out a mid-term and a retrospective evaluation of this Regulation, including the actions implemented under this instrument.
2. The mid-term and the retrospective evaluation shall be carried out in a timely manner to feed into the decision-making process in accordance with the timeline set out Article 40 of Regulation (EU) No .../... [CPR].

## Sub-section 2 Rules for shared management

### Article 27

#### Annual performance review reports

1. ***For the purpose of the annual performance review as referred to in article 36 of Regulation (EU) .../... [CPR],*** ~~By~~ 15 February 2023 and by the same date of each subsequent year up to and including 2031, Member States shall submit to the Commission ~~the annual performance a report as referred to in Article 36(6) of Regulation (EU) .../2021 [Common Provisions Regulation].~~ ***The reporting period shall cover the last accounting year as defined in Article 2(28) of Regulation (EU) .../... [CPR], preceding the year of submission of the report.*** The report submitted ~~in~~ ***on 15 February 2023*** shall cover ~~the implementation of the programme in~~ the period ***from 1 January 2021 to 30 June 2022.***
2. The ~~annual performance~~ report shall in particular set out information on:
  - (a) the progress in the implementation of the programme and in achieving the milestones and targets, taking into account the latest data as required by Article 37 of Regulation (EU) No .../... [CPR];
  - (b) any issues affecting the performance of the programme and the actions taken to address them;
  - (c) the complementarity between the actions supported by the instrument and support provided by other Union Funds, in particular those in or in relation to third countries;
  - (d) the contribution of the programme to the implementation of the relevant Union *acquis* and action plans;
  - ~~(e) the implementation of communication and visibility actions;~~
  - (ef)*** the fulfilment of the enabling conditions and their application throughout the programming period.

3. The Commission may make observations on the ~~annual performance~~ report within two months of the date of its receipt. Where the Commission does not provide observations within that deadline, the reports shall be deemed to have been accepted.
4. In order to ensure uniform conditions for the implementation of this Article the Commission shall adopt an implementing act establishing the template for the ~~annual performance~~ report. This implementing act shall be adopted in accordance with the *examination advisory* procedure referred to in Article 30(2).

#### *Article 28*

#### **Monitoring and reporting**

1. Monitoring and reporting in accordance with Title IV of Regulation (EU) No .../... [CPR] shall be based on the types of intervention set out in Tables 1, 2, ~~and 3~~ **and 4** in Annex VI. To address unforeseen or new circumstances or to ensure the effective implementation of the funding, the Commission shall be empowered to adopt delegated acts to amend Annex VI in accordance with Article 29.
2. The ~~common~~ indicators **set in Annex VIII** shall be used in accordance with Articles 12(1), 17 and 37 of Regulation (EU) No .../... [CPR].

## *Article 28a*

### *Processing of personal data*

- 1. For the purposes of the implementation of the instrument with a view to achieving the objectives set out in Article 3, the Managing Authority, the Audit Authority and the beneficiaries, as data controllers, shall process, in accordance with Regulation (EU) 2016/679, the personal data necessary for the common indicators in Annex VIII, for monitoring, evaluation, control and audit and, where applicable, for determining the eligibility of participants.*
- 2. The personal data referred to in paragraph 1 shall be retained in accordance with Article 76 [of the future CPR].*

## CHAPTER III

### TRANSITIONAL AND FINAL PROVISIONS

#### *Article 29*

##### **Exercise of the delegation**

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.
2. The power to adopt delegated acts referred to in Articles 12, 15, 25 and 28 shall be conferred on the Commission until 31 December 2028.
3. The European Parliament or the Council may revoke the delegation of powers referred to in Articles 12, 15, 25 and 28 at any time. A decision of revocation shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.
4. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement on Better Law-Making of 13 April 2016.
5. As soon as it adopts a delegated act, the Commission shall simultaneously notify the European Parliament and the Council thereof.
6. A delegated act adopted pursuant to Articles 12, 15, 25 and 28 shall enter into force only if neither the European Parliament nor the Council has expressed an objection within two months of being notified of it if, before the expiry of that period, they have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or the Council.

## Article 30

### Committee procedure

1. The Commission shall be assisted by a Coordination Committee for the Asylum, ~~and~~ Migration **and Integration** Fund, the Internal Security Fund and the instrument for border management and visa. That Committee shall be a Committee within the meaning of Regulation (EU) No 182/2011 **of the European Parliament and of the Council**<sup>59</sup>.
2. Where reference is made to this paragraph, Article 5 4 of Regulation (EU) No 182/2011 shall apply. **Where the Committee delivers no opinion, the Commission shall not adopt the draft implementing act and the third subparagraph of Article 5(4) of Regulation (EU) No 182/2011 shall apply.**
- ~~3. Where the Committee delivers no opinion, the Commission shall not adopt the draft implementing act. This shall not apply to the implementing act referred to in Article 27(4).~~

## Article 31

### Transitional provisions

1. This Regulation shall not affect the continuation or modification of the actions concerned under the instrument for external borders and visa as part of the Internal Security Fund for the period 2014-2020, established by Regulation (EU) No 515/2014, which shall continue to apply to those actions until their closure.

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<sup>59</sup> **Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers.**



2. The financial envelope for the instrument may also cover technical and administrative assistance expenses necessary to ensure the transition between the instrument and the measures adopted under its predecessor, the instrument for external borders and visa as part of the Internal Security Fund for the period 2014-2020, as established by Regulation (EU) No 515/2014.

**3. Where Member States continue [after the date of application of CPR] to support a project selected and started under Regulation (EC) No 515/2014, in accordance with Regulation 514/2014, they shall ensure that the following cumulative conditions are met:**

**(a) the project so selected has two phases identifiable from a financial point of view with separate audit trails;**

**(b) the total cost of the project exceeds EUR 2 500 000;**

**(c) payments for the first phase of the project shall be included in payment requests under Regulation (EU) 514/2014. Expenditure for the second phase of the project shall be included in payment applications under Regulation (EU) [CPR];**

**(d) the second phase of the project complies with the applicable law and is eligible for support from the [Fund/instrument] under this Regulation and Regulation [CPR];**

**(e) the Member State commits to complete the project, render it operational and report it in the annual performance report submitted by 15 February 2024.**

**The provisions of this Regulation and Regulation [CPR] shall apply to the second phase of the project.**

*Article 32*

**Entry into force and application**

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

It shall apply from 1 January 2021.

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

Done at Brussels,

*For the European Parliament*  
*The President*

*For the Council*  
*The President*

## ANNEX I

### Criteria for the allocation of funding to the programmes under shared management

1. The available resources referred to in Article 10 shall be broken down between the Member States as follows:
  - (a) each Member State shall receive a fixed amount of EUR ~~5 000 000~~ **8 000 000 in current prices** from the instrument at the start of the programming period only, ***with the exception of Cyprus, Malta and Greece who shall receive a fixed amount of EUR 28 000 000 in current prices;***
  - (b) an amount of EUR ~~157 200 000~~ **200 568 000** for the Special Transit Scheme to be allocated to Lithuania at the start of the programming period only;
  - (c) and the remaining resources referred to in Article 10 shall be distributed based on the following criteria:
    - 30 % for external land borders;
    - 35 % for external sea borders;
    - 20 % for airports;
    - 15 % for consular offices.

2. The resources available under paragraph 1(c) for external land borders and external sea borders *as referred to in Article 2(4)* shall be broken down between Member States as follows:

(a) 70 % for the *weighted* length of their external land borders and external sea borders, ~~which will be calculated, on the basis of weighting factors for each specific section as defined in Regulation (EU) No 1052/2013<sup>60</sup>, determined in accordance with paragraph 11~~ *The weighted length shall be established by the application of the weighting factors referred to in paragraph 11 for each specific section as defined in Article 2(11) of Regulation (EU) 2019/1896<sup>61</sup>; and*

(b) 30 % for the workload at their external land and external sea borders, as determined in accordance with paragraph 7(a).

~~3. The weighting as referred to in paragraph 2(a) shall be determined by the European Border and Coast Guard Agency in accordance with paragraph 11.~~

4. The resources available under paragraph 1(c) for airports shall be broken down between Member States according to the workload at their airports, as determined in accordance with paragraph 7(b).

5. The resources available under paragraph 1(c) for consular offices shall be broken down between Member States as follows:

(a) 50 % for the number of consular offices (excluding honorary consulates) of the Member States in the countries listed in Annex I of ~~Council Regulation (EC) No 539/2001 to~~ *Regulation (EU) 2018/1806<sup>62</sup>, and*

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<sup>60</sup> Regulation (EU) No 1052/2013 of 22 October 2013 establishing the European Border Surveillance System (Eurosir), (OJ L 295, 6.11.2013, p.11).

<sup>61</sup> *Regulation (EU) No 1896/2019 of 13 November 2019 on the European Border and Coast Guard and repealing Regulation (EU) No 1052/2013 and (EU) 2016/1624 (OJ L 295, 14.11.2019, p.1).*

<sup>62</sup> ~~Council Regulation (EC) No 539/2001 of 15 March 2001 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement~~ *Regulation (EU) 2018/1806 of the European Parliament and of the Council of 14 November 2018 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement, (OJ L 303, 28.11.2018, p. 39).*

(b) 50 % for the workload as regards the management of visa policy at consular offices of Member States in the countries listed in Annex I to Regulation (EC) No 539/2004 (EU) 2018/1806, as determined in accordance with paragraph 7(c) of this Annex.

6. For the purpose of the distribution of resources under paragraph 1(c), ‘external sea borders’ shall mean the outer limit of the territorial sea of the Member States as defined in accordance with Articles 4 to 16 of the United Nations Convention on the Law of the Sea. However, in cases where long range operations *outside the outer limit of the territorial sea of the Member States have been carried out in high threat areas* on a regular basis ~~are required~~ in order to prevent illegal immigration or illegal entry, *this shall be taken into account for the purposes of defining ‘external sea borders’* ~~this shall be the outer limit of high threat areas~~. The definition of ‘external ~~maritime-sea~~ borders’ in this regard shall be determined by taking into account the operational data over the past two years as provided by the Member States concerned *and as assessed by the EBCGA for the purposes of the report referred to in paragraph 10*. This definition shall be used exclusively for the purpose of this Regulation.

7. For the purposes of the initial allocation of funding, the assessment of the workload shall be based on the latest average figures covering the ~~preceding 36 months available on the date of the applicability of this Regulation~~ *years 2017, 2018 and 2019*. For the purposes of the mid-term review, the assessment of the workload shall be based on the latest average figures covering the ~~preceding 36 months available at the time of~~ *the years 2021, 2022 and 2023* *prior to* the mid-term review in 2024. The assessment of the workload shall be based on the following factors:

(a) at external land borders and external sea borders:

(1) 70 % for the number of crossings of the external border at authorised border crossing points;

(2) 30% for the number of third-country nationals refused entry at the external border.

(b) at airports:

(1) 70 % for the number of crossings of the external border at authorised border crossing points;

(2) 30% for the number of third-country nationals refused entry at the external border.

(c) at consular offices:

the number of visa applications for short stays or airport transit.

8. The reference figures for the number of consular offices as referred to in paragraph 5(a) shall be calculated according to the information contained in Annex 28 of Commission Decision C(2010) 1620 of 19 March 2010 establishing the Handbook for the processing of visa applications and the modifications of issued visas *on the basis of the information notified to the Commission in accordance with Article 40(4) of Regulation (EC) No 810/2009*<sup>63</sup>.

Where Member States have not provided the statistics concerned, the latest available data for those Member States shall be used. Where there is no data available for a Member State, the reference figure shall be zero.

9. The reference figures for the workload referred to:

(a) in paragraph 7(a)(1) and 7(b)(1) shall be the latest statistics provided by Member States in accordance with Union law;

(b) in paragraph 7(a)(2) and 7(b)(2) shall be the latest statistics produced by the Commission (Eurostat) on the basis of data provided by Member States in accordance with Union law;

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<sup>63</sup> *Regulation (EC) No 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas (Visa Code) (OJ L 243, 15.9.2009, p. 1).*

(c) in paragraph 7(c) shall be the latest visa statistics published by the Commission in accordance with Article 46 of the Visa Code<sup>64</sup>.

(d) Where Member States have not provided the statistics concerned, the latest available data for those Member States shall be used. Where there is no data available for a Member State, the reference figure shall be zero.

10. The European Border and Coast Guard Agency shall provide the Commission with a report on the breakdown of resources as regards external land borders, external sea borders and airports, as referred to in paragraph 1(c).

11. For the purposes of the initial allocation, the report referred to in paragraph 10 shall identify the average **impact** level ~~of threat of~~ **for** each border section based on the latest average figures covering **the years 2017, 2018 and 2019** ~~the preceding 36 months on the date of the applicability of this Regulation~~. For the purposes of the mid-term review, the report referred to in paragraph 10 shall identify the average **impact** level ~~of threat of~~ **for** each border section based on the latest average figures covering **the years 2021, 2022 and 2023 prior to the preceding 36 months available at the time of the mid-term review in 2024**. It shall determine the following specific weighting factors per section applying the ~~threat levels~~ **impact levels determined in accordance with Article 34(1) of Regulation (EU) 2019/1896 as defined in Regulation (EU) No 1052/2013**:

(a) factor ~~0.5~~ **1** for low ~~threat~~ **impact level**;

(b) factor 3 for medium ~~threat~~ **impact level**;

(c) factor 5 for high **and critical** ~~threat~~ **impact level**;

~~(d) factor 8 for critical threat.~~

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<sup>64</sup> Regulation (EC) No 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas (Visa Code) (OJ L 243, 15.9.2009, p. 1).

## ANNEX II

### Implementation measures

1. The instrument shall contribute to the specific objective set out in Article 3(2)(a) by focusing on the following implementation measures:
  - (a) improving border control in line with Article 3(a) 4(a) of Regulation (EU) .../2019 [EBCG] 2016/1624 by:
    - i. reinforcing the capacities for carrying out checks and surveillance at the external borders, including measures to prevent and detect cross-border crime, such as migrant smuggling, trafficking in human beings and terrorism;
    - ii. supporting search and rescue in the context of carrying out border surveillance at sea;
    - iii. implementing technical and operational measures within the Schengen area which are related to border control;
    - iv. carrying out analyses of the risks for internal security and analyses of the threats that may affect the functioning or security of the external borders;
    - v. supporting, within the scope of this Regulation, Member States facing existing or potential disproportionate migratory pressure at the EU's external borders, including through technical and operational reinforcement, as well as by deploying migration management support teams in hotspot areas.
  - (b) further developing the European Border and Coast Guard, through common capacity-building, joint procurement, establishment of common standards and any other measures streamlining the cooperation and coordination between the Member States and the European Border and Coast Guard Agency;



- (c) enhancing inter-agency cooperation at national level among the national authorities responsible for border control or for tasks carried out at the border, and at EU level between the Member States, or between the Member States, on the one hand, and the relevant Union bodies, offices and agencies or third countries, on the other;
  - (d) ensuring the uniform application of the Union *acquis* on external borders, including through the implementation of recommendations from quality control mechanisms such as the Schengen evaluation mechanism in line with Regulation (EU) No 1053/2013, vulnerability assessments in line with Regulation (EU) .../2019 [EBCG] 2016/1624, and national quality control mechanisms;
  - (e) setting up, operating and maintaining large-scale IT systems in the area of border management, including the interoperability of these IT systems and their communication infrastructure.
2. The instrument shall contribute to the specific objective set out in Article 3(2)(b) by focusing on the following implementation measures:
- (a) providing efficient and client-friendly services to visa applicants while maintaining the security and integrity of the visa procedure;
  - (b) ensuring the uniform application of the Union *acquis* on visas, including the further development and modernisation of the common policy on visas;
  - (c) developing different forms of cooperation between Member States in visa processing;
  - (d) setting up, operating and maintaining large-scale IT systems in the area of the common policy on visas, including the interoperability between these IT systems and their communication infrastructure.

## ANNEX III

### *List of indicative actions to be supported by the Instrument in line with Article 4*

#### **Scope of support**

1. Within the specific objective referred to in Article 3(2)(a), the instrument shall ~~in particular~~ support *actions such as* ~~the following~~:
  - (a) infrastructures, buildings, systems and services required at border crossing points, in hotspot areas and for border surveillance between border crossing points to prevent and tackle unauthorised border crossings, illegal immigration and cross-border crime at the external borders, as well as to guarantee the smooth flows of legitimate travellers;
  - (b) operating equipment, including means of transport, ~~and communication~~ systems, *services and rehabilitation and refurbishment of buildings* required for effective and secure border control *at border crossing points, in hotspot areas and for border surveillance*, ~~in accordance with standards developed by the European Border and Coast Guard Agency, where such standards exist~~;
  - (c) training in the field of or contributing to the development of European integrated border management, taking into account operational needs and risk analysis and in full compliance with fundamental rights;
  - (d) secondment of joint liaison officers to third countries as defined in Regulation (EU) No .../ ... [new ILO Regulation]<sup>65</sup> and secondment of border guards and other relevant experts to Member States or from a Member State to a third country, reinforcement of cooperation and operational capacity of networks of experts or liaison officers, as well as exchange of best practices and boosting the capacity of European networks to assess, promote, support and develop Union policies;

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<sup>65</sup> OJ L [...], [...]. p.

- (e) studies, pilot projects and other relevant actions aiming to implement or develop European integrated border management, including measures aiming at the development of the European Border and Coast Guard, such as common capacity-building, joint procurement, establishment of common standards and other measures streamlining the cooperation and coordination between the European Border and Coast Guard Agency and Member States;
- (f) actions developing innovative methods or deploying new technologies with a potential for transferability to other Member States, in particular deploying the results of security research projects where such deployment has been identified by the European Border and Coast Guard Agency, acting under Article ~~66~~ 37 of Regulation (EU) .../2019 [EBCG] 2016/1624, as contributing to the development of operational capabilities of the European Border and Coast Guard;
- (g) preparatory, monitoring, administrative and technical activities, required to implement external border policies, including to strengthen the governance of the Schengen area by developing and implementing the evaluation mechanism as established by Regulation (EU) No 1053/2013 to verify the application of the Schengen *acquis* and the Schengen Borders Code, including mission expenditure for experts of the Commission and the Member States participating in on-site visits as well as measures to implement recommendations issued following vulnerability assessments carried out by the European Border and Coast Guard Agency in line with Regulation (EU) .../2019 [EBCG] 2016/1624;
- (h) identification, fingerprinting, registration, security checks, debriefing, provision of information, medical and vulnerability screening and, where necessary, medical care as well as referral of third-country nationals to the appropriate procedure at the external borders, in particular in hotspot areas;

- (i) actions aimed at enhancing awareness of external border policies among stakeholders and the general public, including corporate communication on the political priorities of the Union;
- (j) development of statistical tools, methods and indicators;
- (k) operating support for the implementation of European integrated border management-;
- (l) *actions, equipment and surveillance means necessary for the implementation of Regulation 1052/2013.***

2. Within the specific objective referred to in Article 3(2)(b), the instrument shall ~~in particular~~ support ***actions such as*** ~~the following~~:

- (a) infrastructures and buildings required for the processing of visa applications and consular cooperation, including security measures, as well as other actions aimed at improving the quality of service for visa applicants;
- (b) operating equipment and ~~communication~~ systems required for the processing of visa applications and consular cooperation;
- (c) training of consular and other staff contributing to the common visa policy and consular cooperation;
- (d) the exchange of best practices and experts, including the secondment of experts, as well as boosting the capacity of European networks to assess, promote, support and further develop Union policies and objectives;

- (e) studies, pilot projects and other relevant actions, such as actions aimed at improving knowledge through analyses, monitoring and evaluation;
  - (f) actions developing innovative methods or deploying new technologies with a potential for transferability to other Member States, especially projects aiming at testing and validating the outcome of Union-funded research projects;
  - (g) preparatory, monitoring, administrative and technical activities, including to strengthen the governance of the Schengen area by developing and implementing the evaluation mechanism as established by Regulation (EU) No 1053/2013 to verify the application of the Schengen *acquis*, including mission expenditure for experts of the Commission and the Member States participating in on-site visits;
  - (h) awareness-raising activities on visa policies among stakeholders and the general public, including corporate communication on the political priorities of the Union;
  - (i) development of statistical tools, methods and indicators;
  - (j) operating support for the implementation of the common visa policy.
3. Within the policy objective referred to in Article 3(1), the instrument shall ~~in particular~~ support ***actions such as*** ~~the following~~:
- (a) infrastructures and buildings required for the hosting of large-scale IT systems and associated communication infrastructure components;
  - (b) equipment and communication systems necessary to ensure the proper functioning of large-scale IT systems;
  - (c) training and communication activities in relation to large-scale IT systems;

- (d) development and upgrading of large-scale IT systems;
- (e) studies, proof of concepts, pilot projects and other relevant actions related to the implementation of large-scale IT systems including their interoperability;
- (f) actions developing innovative methods or deploying new technologies with a potential for transferability to other Member States, especially projects aiming at testing and validating the outcome of Union-funded research projects;
- (g) development of statistical tools, methods and indicators for large-scale IT systems in the field of visa and borders;
- (h) operating support for the implementation of large-scale IT systems.

## ANNEX IV

### **Actions eligible for higher co-financing in line with Article 11(3) and ~~Article 12(14)~~**

- (1) Purchasing of operating equipment through joint procurement schemes with the European Border and Coast Guard Agency, to be put at the disposal of the European Border and Coast Guard Agency for its operational activities in line with Article ~~64(14)~~ 39(14) of Regulation (EU) .../2019 [EBCG] 2016/1624.
- (2) Measures supporting inter-agency cooperation between a Member State and a neighbouring third country with which the EU shares a common land or maritime border.
- (3) Further development of the European Border and Coast Guard, through common capacity building, joint procurement, establishment of common standards and any other measures streamlining the cooperation and coordination between the Member States and the European Border and Coast Guard Agency, as outlined in paragraph 1(b) of Annex II.
- (4) Joint deployment of immigration liaison officers as referred to in Annex III.
- (5) Measures enhancing the identification of victims of trafficking in human beings and enhancing cross-border cooperation for detecting traffickers in the framework of border control.
- (6) Measures deploying, transferring, testing and validating new methodology or technology, including pilot projects and follow-up measures to Union-funded security research projects, as referred to in Annex III.
- (7) Measures for setting up and running hotspot areas in Member States facing existing or potential exceptional and disproportionate migratory pressure.

- (8) Further developing forms of cooperation among Member States in visa processing, as outlined in paragraph 2(c) of Annex II.
- (9) Increasing the consular presence or representation of Member States in visa-required countries, in particular in countries where no Member State is currently present.
- (10) *Measures which aim at improving the interoperability of IT systems and communication networks.*



## ANNEX V

### Core performance indicators referred to in Article 25(1)

(a) Specific objective 1: Supporting effective European integrated border management at the external borders implemented by the European Border and Coast Guard as a shared responsibility of the European Border and Coast Guard Agency and of the national authorities responsible for border management, to facilitate legitimate border crossings, to prevent and detect illegal immigration and cross-border crime and to effectively manage migratory flows:

1. *Additional capacity of Automated border control gates and e-gates*
2. *Enhanced operational capacity of the EBCG*
3. *Number of persons using fraudulent travel documents detected at the border crossing points*
4. *Number of addressed recommendations with financial implications from Schengen Evaluations and from vulnerability assessments in the area of border management*

~~(1) Number of irregular border crossings detected at the EU external borders a) between the border crossing points; and b) at the border crossing points~~

~~*Data source: European Border and Coast Guard Agency*~~

~~(2) Number of persons using fraudulent travel documents detected at the border crossing points~~

~~*Data source: European Border and Coast Guard Agency*~~

(b) Specific objective 2: Supporting the common visa policy to facilitate legitimate travel and prevent migratory and security risks:

1. *Visa applications using digital means*

2. *Enhanced cooperation between Member States in visa processing*

3. *Number of addressed recommendations with financial implications from Schengen Evaluations in the area of the common visa policy*

~~(1) Number of persons using fraudulent travel documents detected at consulates supported by the Fund~~

~~*Data source: Member States*~~<sup>66</sup>

~~(2) Average decision time (and trends) in the visa procedure~~

~~*Data source: Member States*~~<sup>67</sup>

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<sup>66</sup>— ~~Data for this indicator is collected by Member States through the Visa Information System (VIS) and may be accessed by the Commission in the future for the purposes of reporting and statistics, pending the negotiations on the proposal of the Commission for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 767/2008, Regulation (EC) No 810/2009, Regulation (EU) 2017/2226, Regulation (EU) 2016/399, Regulation XX/2018 [Interoperability Regulation], and Decision 2004/512/EC and repealing Council Decision 2008/633/JHA (COM(2018) 302 final of 16.05.2018).~~

<sup>67</sup>— ~~Idem.~~

## ANNEX VI

### Types of intervention

**TABLE 1: CODES FOR THE INTERVENTION FIELD DIMENSION**

<b>I. European integrated border management</b>	
001	Border checks
002	Border surveillance - air assets
003	Border surveillance - land assets
004	Border surveillance - maritime assets
005	Border surveillance - automated border surveillance systems
006	Border surveillance - other measures
007	Technical and operational measures within the Schengen area which are related to border control
008	Situational awareness and exchange of information
009	Risk analysis
010	Processing of data and information
011	Hotspot areas
012	European Border and Coast Guard development
013	Inter-agency cooperation - national level
014	Inter-agency cooperation - European Union level
015	Inter-agency cooperation - with third countries

016	Deployment of joint immigration liaison officers
017	Large-scale IT systems - Eurodac for border management purposes
018	Large-scale IT systems - Entry-exit System (EES)
019	Large-scale IT systems - European Travel Information and Authorisation System (ETIAS)
020	Large-scale IT systems - Schengen Information System (SISII)
021	Large-scale IT systems - Interoperability
022	Operating support - Integrated border management
023	Operating support - Large-scale IT systems for border management purposes
024	Operating support - Special Transit Scheme
<b>II. Common visa policy</b>	
001	Improving visa application processing
002	Enhancing the efficiency, client-friendly environment and security at consulates
003	Document security / document advisors
004	Consular cooperation
005	Consular coverage
006	Large-scale IT systems - Visa Information System (VIS)
007	Other IT systems for visa application processing purposes
008	Operating support - Common visa policy
009	Operating support - Large-scale IT systems for visa application processing purposes
010	Operating support - Special Transit Scheme

<b>III. Technical assistance</b>	
001	<i>Technical assistance</i> <del>Information and communication</del>
002	<del>Preparation, implementation, monitoring and control</del>
003	<del>Evaluation and studies, data collection</del>
004	Capacity building

**TABLE 2: CODES FOR THE TYPE OF ACTION DIMENSION**

001	Infrastructures and buildings
002	Means of transport
003	Other operating equipment
004	Communication systems
005	IT systems
006	Training
007	Exchange of best practices - between Member States
008	Exchange of best practices - with third countries
009	Deployment of experts
010	Studies, proofs of concept, pilot projects and similar actions
011	Communication activities
012	Development of statistical tools, methods and indicators
013	Deployment or other follow-up of research projects

**TABLE 3: CODES FOR THE IMPLEMENTATION MODALITIES DIMENSION**

<b>001</b>	<b><i>Actions as per Art. 11(1)</i></b>
<b>002</b>	<b><i>Specific actions</i></b>
<b>003</b>	<b><i>Actions listed in Annex IV</i></b>
<b>004</b>	<b><i>Operating support</i></b>
<b>005</b>	<b><i>Emergency assistance</i></b>

001	Specific action
002	Emergency assistance
003	Actions listed in Annex IV
004	Implementation of Schengen evaluation recommendations
005	Implementation of vulnerability assessment recommendations
006	Cooperation with third countries
007	Actions in third countries

**TABLE 4: CODES FOR SECONDARY IMPLEMENTATION DIMENSION**

<b>001</b>	<b><i>Cooperation with third countries</i></b>
<b>002</b>	<b><i>Actions in third countries</i></b>
<b>003</b>	<b><i>Implementation of Schengen evaluation recommendations</i></b>
<b>004</b>	<b><i>Implementation of vulnerability assessment recommendations</i></b>

## ANNEX VII

### Eligible actions for operating support

- (a) Within the specific objective set out in Article 3(2)(a), operating support shall cover the following costs on the condition that they are not being covered by the European Border and Coast Guard Agency in the context of its operational activities:
- (1) staff costs, *including for training*;
  - (2) maintenance or repair of equipment and infrastructure *including buildings and access roads*;
  - (3) service costs, including at hotspot areas within the scope of this Regulation;
  - (4) running costs on operations;-
  - (5) *costs related to real estate, including rental and depreciation.*

A host Member State in the meaning of Article 2(5) of Regulation (EU) No 1624/2016<sup>68</sup> may use operating support to cover its own running costs for its participation in the operational activities referred to in Article 2(5) of Regulation (EU) No 1624/2016 and falling within the scope of this Regulation or for the purposes of its national border control activities.

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<sup>68</sup> Regulation (EU) 1624/2016 of the European Parliament and of the Council of 14 September 2016 on the European Border and Coast Guard (OJ L 251, 16.9.2016, p.1).

- (b) Within the specific objective specific objective set out in Article 3(2)(b), operating support shall cover:
- (1) staff costs, including for training;
  - (2) service costs;
  - (3) maintenance or repair of equipment and infrastructure;
  - (4) costs related to real estate, including rental and depreciation.
- (c) Within the policy objective set out in Article 3(1), operating support *for large-scale IT systems* shall cover:
- (1) staff costs, including for training;
  - (2) operational management and maintenance of large-scale IT systems and their communication infrastructures, including the interoperability of these systems and rental of secure premises.
- (d) In addition to the above, operating support within the programme for Lithuania shall provide support in line with paragraph 1 of Article 16.



## ANNEX VIII

### Output and result indicators referred to in Article 25(3)

- (a) Specific objective 1: Supporting effective European integrated border management at the external borders implemented by the European Border and Coast Guard as a shared responsibility of the European Border and Coast Guard Agency and of the national authorities responsible for border management, to facilitate legitimate border crossings, to prevent and detect illegal immigration and cross-border crime and to effectively manage migratory flows:

#### *Output indicators*

1. *Number of items of equipment purchased for border crossing points*
  - 1.1 *of which number of Automated Border Control gates, self-service systems and e-gates purchased*
2. *Number of facilities for border crossing points constructed / upgraded*
3. *Number of aerial vehicles purchased*
  - 3.1 *of which number of unmanned aerial vehicles purchased*
4. *Number of maritime transport means purchased*
5. *Number of land transport means purchased*
6. *Number of staff dealing with border management*
7. *Number of joint liaison officers deployed to third countries*
8. *Number of participants in training activities*

9. *Number of IT functionalities developed / maintained / upgraded*
10. *Number of cooperation projects with Third Countries*

*Result indicators*

1. *Number of items of equipment registered in the Technical Equipment Pool of the European Border and Coast Guard Agency*
2. *Number of items of equipment put at the disposal of the European Border and Coast Guard Agency*
3. *Number of initiated / improved forms of cooperation of national authorities with the Eurosur National Coordination Centre (NCC)*
4. *Number of border crossings through Automated Border Control gates and e-gates*
5. *Number of addressed recommendations with financial implications from Schengen Evaluations and from vulnerability assessments in the area of border management*
6. *Number of EU large-scale IT systems developed / maintained / upgraded*

~~(1) Border control infrastructure, transport means and other equipment items financed with the support of the instrument:~~

~~—— number of newly built or upgraded border crossing points out of the total number of newly built or upgraded border crossing points in the Member State concerned;~~

- ~~—— number of Automated Border Control gates;~~
- ~~—— number of air transport means;~~
- ~~—— number of maritime transport means;~~
- ~~—— number of land transport means;~~
- ~~—— number of items of equipment put at the disposal of the European Border and Coast Guard Agency;~~
- ~~—— number of other items of equipment, out of which the number of items of equipment for setting up, upgrading or maintaining hotspot areas for the purposes of this Regulation;~~
- ~~—— number of multipurpose items of equipment supported by the instrument.~~

~~(2) Number of specialised posts in third countries supported by the instrument~~

- ~~—— joint liaison officers, as referred to in Annex III;~~
- ~~—— other specialised posts related to border management.~~

- ~~(3) Number of cooperation projects or cooperation streams set up in Member States with the support of the instrument between the national authorities and the European Border and Coast Guard Agency contributing towards the development of the European Border and Coast Guard.~~
- ~~(4) Number of items of equipment used during the operational activities of the European Border and Coast Guard Agency purchased with support of the instrument out of the total number of items of equipment registered in the Technical Equipment Pool of the European Border and Coast Guard Agency.~~
- ~~(5) Number of cooperation projects or cooperation streams of national agencies with the Eurosur National Coordination Centre (NCC) established with support of the instrument.~~
- ~~(6) Number of staff trained in aspects related to the integrated border management with the support of the instrument.~~
- ~~(7) Number of IT functionalities developed, implemented, maintained or upgraded with the support of the instrument, including for interoperability purposes:~~
- ~~—— SISII;~~
  - ~~—— ETIAS;~~
  - ~~—— EES;~~

~~— VIS for border management purposes;~~

~~— Eurodac for border management purposes;~~

~~— Number of connections of IT systems to the European Search Portal financed with the support of the instrument;~~

~~— Any other large scale IT systems within the scope of this Regulation.~~

~~(8) Number of Schengen Evaluation recommendations in the area of borders and vulnerability assessment recommendations addressed with the support of the instrument, out of the total number of recommendations having financial implication.~~

(b) Specific objective 2: Supporting the common visa policy to facilitate legitimate travel and prevent migratory and security risks:

*Output indicators*

- 1. Number of new/ upgraded consulates outside the Schengen area*
- 2. Number of projects supporting the digitalisation of visa processing*
- 3. Number of participants in training activities*

4. *Number of staff deployed to consulates in third countries*
  - 4.1 *of which number of staff deployed for visa processing*
5. *Number of IT functionalities developed / maintained / upgraded*

***Result indicators***

1. *Number of addressed recommendations with financial implications from Schengen Evaluations in the area of the common visa policy*
2. *Number of visa applicants applying through digital means*
3. *Number of initiated / improved forms of cooperation set up among Member States in visa processing*
4. *Number of EU large-scale IT systems developed / maintained / upgraded*

***Data source for all indicators is Member States***

- ~~(1) Number of consulates outside the Schengen area set up or upgraded with the support of the instrument out of the total number of consulates set up or upgraded of the Member State outside the Schengen area.~~
- ~~(2) Number of staff trained and number of training courses in aspects related to the common visa policy with the support of the instrument.~~

- ~~(3) Number of IT functionalities developed, implemented, maintained or upgraded with the support of the instrument, including for interoperability purposes:~~
- ~~—— VIS;~~
  - ~~—— EES;~~
  - ~~—— Any other large scale IT systems within the scope of this Regulation.~~
- ~~(4) Number of forms of cooperation among Member States in visa processing set up and upgraded with the support of the instrument:~~
- ~~—— co-locations;~~
  - ~~—— common application centres;~~
  - ~~—— representations;~~
  - ~~—— others.~~
- ~~(5) Number of Schengen Evaluation recommendations in the area of the common visa policy implemented with the support of the instrument, as a share of the total number of recommendations having financial implications.~~
- ~~(6) Number of visa required countries where the number of Member States present or represented has increased with the support of the instrument.~~

~~*data source: European Commission*~~

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