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#### 'I' ITEM NOTE

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From: Presidency/General Secretariat of the Council  
To: Permanent Representatives Committee (Part 2)

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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 customs control equipment  
- Progress Report  
- Confirmation of the Common Understanding

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#### I. INTRODUCTION

1. On 12 June 2018, the Commission submitted to the Council and the European Parliament 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 customs control equipment.
2. The proposal is part of the sectoral proposals complementing the package of horizontal proposals on the Multiannual Financial Framework (MFF) for the years 2021 to 2027. It aims at providing financial support for the purchase, maintenance and upgrade of customs control equipment.

3. The Permanent Representatives Committee provided the Austrian Presidency with the partial mandate<sup>1</sup> to enter into informal negotiations with the Parliament with some provisions remaining in brackets.
4. On the side of the European Parliament, the Internal Market and Consumer Protection (IMCO) Committee has the lead responsibility. Mr Jiří POSPÍŠIL (EPP, CZ) has been appointed the Rapporteur for the proposal. The report was tabled on 12 December 2018; the Plenary voted on 15 January 2019<sup>2</sup>, and the proposal was referred to the IMCO Committee to start interinstitutional negotiations.
5. The European Economic and Social Committee adopted its opinion on 17 October 2018<sup>3</sup>.
6. In January and February 2019, the Romanian Presidency took part in technical negotiations with the Parliament. At the beginning of March 2019, the European Parliament informed the Romanian Presidency about its decision to postpone the negotiations on the proposal until the new European Parliament is constituted.
7. On 16 April 2019, the European Parliament adopted its legislative resolution on the proposal<sup>4</sup>, thus concluding its first reading.

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<sup>1</sup> Doc. ST 15513/1/18 REV 1.

<sup>2</sup> Doc. 5387/19.

<sup>3</sup> OJ C 62 of 15.2.2019, p. 67.

<sup>4</sup> Doc. 8057/19.

## II. STATE OF PLAY

8. The Finnish Presidency conducted a series of technical negotiations in November 2019. Following the Trilogue, held on 26 November 2019, the Presidency reached a comprehensive common understanding with the representatives of the European Parliament, as set out in Annex.
9. On 2 December 2019, the Presidency presented this common understanding to the Working Party on Customs Union. The Presidency explained that the result was balanced on substance, very close to the mandate received and preserved the main priorities identified by Member States. A vast majority of delegations expressed their full support for the overall compromise reached by the Presidency.
10. The document presented in Annex reflects the state of play of negotiations reached at the Trilogue on the Regulation establishing, as part of the Integrated Border Management Fund, the instrument for financial support for customs control equipment. While this reflects a common understanding between the European Parliament and the Presidency, it is without prejudice to the final outcome of the negotiations on the full text.
11. It is understood that elements in brackets in the text were left outside of the scope of the negotiations at this stage, as they require the completion of negotiations on the Multiannual Financial Framework 2021-2027 for the Council to be able to establish its position.
12. These bracketed provisions concern the protection of the Union's budget in case of generalised deficiencies as regards the rule of law in the Member States (Recital (24)) and the financial envelope for the implementation of the Instrument (Article 4(1)).
13. At the request of the European Parliament, a number of provisions regarding institutional matters, that is implementing/delegated acts (Recital (18), Recital (22), Article 11(2), Article 14(2), Article 14(3) and (6), Article 15), were also bracketed and thus left outside of the scope of the negotiations at this stage.

14. Provisions on the protection of the Union's financial interests (Recitals (23)) have been adapted to be in line with the horizontal guidance<sup>5</sup>.
15. Work will resume with the European Parliament once the Council has a mandate on all elements of the proposal.

### III. CONCLUSION

16. In light of the above, the Permanent Representatives Committee is invited to confirm the common understanding reached at the Trilogue on 26 November 2019, on the Regulation establishing, as part of the Integrated Border Management Fund, the instrument for financial support for customs control equipment, as set out in the Annex to this note.

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<sup>5</sup> Doc. 5146/1/19 REV1.

**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 customs control equipment COM (2018) 0474 final - 2018/0258(COD)**

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 33, 114 and 207 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>6</sup>,

Acting in accordance with the ordinary legislative procedure,

Whereas:

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<sup>6</sup> OJ C , , p. .

(1) The **2 140** customs offices<sup>7</sup> that are present over the external borders of the European Union need to be properly equipped to ensure **the efficient and effective** operation of the customs union. The need for adequate customs controls **with equivalent results** is ever more pressing not only by reason of the traditional function of customs to collect revenue but also increasingly by the necessity to significantly reinforce the control of goods entering and exiting Union's external borders in order to ensure both safety and security. However, at the same time, those controls on the movement of goods across the external borders should not impair but rather facilitate legitimate trade with third countries.

*(1a) The customs union is a cornerstone of the European Union, which is one of the largest trading blocks in the world. Since the customs union is essential for the proper functioning of the single market for the benefit of both businesses and citizens, continuous steps to strengthen the customs union are needed.*

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<sup>7</sup> Annex of the Annual 2016 Report of the Customs Union Performance available on: [https://ec.europa.eu/info/publications/annual-activity-report-2016-taxation-and-customs-union\\_en](https://ec.europa.eu/info/publications/annual-activity-report-2016-taxation-and-customs-union_en)

- (2) There is currently an imbalance in the performance of customs control by Member States. This imbalance is due both to geographic differences between Member States ***both in terms of their geographic features***, and ***in terms of*** in their respective capacities and resources. The ability of Member States to react to challenges generated by the constantly evolving global business models and supply chains ~~depend~~ **depends** not only on the human component but also on the availability ***and proper functioning*** of modern and reliable customs control equipment. ***Challenges, such as the surge of e-commerce, digitalisation and resilience to cyber-attacks, will also increase demand for effective customs controls.*** The provision of equivalent customs control equipment is therefore an important element in addressing the existing imbalance. It will improve equivalence in the performance of customs controls throughout ~~across the~~ Member States and thereby ***contribute to the preventing*** prevention of avoid the diversion of the flows of goods towards the weakest points ***in the customs control system, namely import point shopping.*** ***Consequently, the goods entering the customs territory of the Union should be subject to risk-based controls in accordance with Regulation (EU) No 952/2013 of the European Parliament and of the Council<sup>8</sup> ('the Union Customs Code').***
- (3) Member States have repeatedly expressed the need for financial support and requested an in-depth analysis of the equipment needed. In its conclusions<sup>9</sup> on customs funding on 23 March 2017, the Council invited the Commission to "evaluate the possibility of funding technical equipment needs from future Commission financial programmes and improve coordination and (...) cooperation between Customs Authorities and other law enforcement authorities for funding purposes".

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<sup>8</sup> ***Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code (OJ L 269, 10.10.2013, p. 1).***

<sup>9</sup> <https://www.consilium.europa.eu/media/22301/st09581en17-vf.pdf> and <http://data.consilium.europa.eu/doc/document/ST-7586-2017-INIT/en/pdf>.

- 4) Under *the Union Customs Code* Regulation (EU) No 952/2013 of the European Parliament and of the Council<sup>10</sup>, customs controls are to be understood not only as the supervision of customs legislation but also other legislation governing the entry, exit, transit, movement, storage and end-use of goods moved between the customs territory of the Union and countries or territories outside that territory, and the presence and movement within the customs territory of the Union of non-Union goods and goods placed under the end-use procedure. Such other legislation empowering customs authorities with specific tasks of control includes provisions on taxation, in particular as regards excise duties and value added tax, on the external aspects of the internal market, on the common trade policy and other common Union policies having a bearing on trade, on the overall supply chain security and on the protection of the financial and economic interests of the Union and its Member States.
- (5) Supporting the creation of an adequate and equivalent level **of results** of customs controls at the Union's external borders allows maximising the benefits of the customs union *and thus giving additional support to the customs authorities acting as one to protect the interests of the Union*. A dedicated Union intervention for customs control equipment correcting current imbalances would moreover contribute to the overall cohesion between Member States. **Such a dedicated fund would address the needs of all types of borders: sea and other waterways, air, rail, road and other land borders, as well as postal hubs**. In view of the challenges facing the world, in particular the continued need to protect the financial and economic interests of the Union and its Member States while easing the flow of legitimate trade, the availability of modern and reliable control equipment at the external borders is indispensable.

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<sup>10</sup> ~~Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code (OJ L 269, 10.10.2013, p. 1).~~



- (6) It is therefore opportune to establish a new Instrument for financial support for customs control equipment **aimed at all types of borders. The Instrument should support the customs union and the customs authorities to protect the financial and economic interests, to ensure security and safety within the Union and to protect the Union from unfair and illegal trade, such as counterfeiting of goods, while facilitating legitimate business activity. It should contribute to adequate and equivalent results of customs controls. Furthermore, customs control equipment financed under this Instrument should support the implementation of the customs risk management framework as referred to in Article 46 of the Union Customs Code. This objective should be achieved via the transparent purchase, maintenance and upgrade of relevant, state-of-the-art and reliable customs control equipment that should take due account of the protection of data, cyber-resilience, and safety and environmental considerations, including the environmental friendly disposal of the replaced equipment.**
- (7) 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 equivalence 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. It is equally important to promote inter-agency cooperation at Union borders as regards controls of goods and controls of persons among the national authorities in each Member State that are responsible for border control or for other tasks carried out at the border, **with a view to maximising Union added-value in the field of border management and customs controls.**
- (8) It is therefore necessary to establish an Integrated Border Management Fund ('the Fund').
- (9) Due to the legal particularities applicable to Title V of the TFEU as well as 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.

- (10) The Fund should therefore be established as a comprehensive framework for Union financial support in the field of border management comprising the Instrument for financial support for customs control equipment ('the Instrument') established by this Regulation as well as the instrument for financial support for border management and visa established by Regulation (EU) No .../... of the European Parliament and of the Council<sup>11</sup>.
- (11) This Regulation lays down a financial envelope for the 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>12</sup>, for the European Parliament and the Council during the annual budgetary procedure. **It should be possible for this financial envelope to cover necessary and duly justified expenses for activities for managing the Instrument and evaluating its performance, insofar as those activities are related to the general and specific objectives of the Instrument.**
- (12) Regulation (EU, Euratom) **2018/1046** of the European Parliament and of the Council<sup>13</sup> (the 'Financial Regulation') applies to this Instrument. It lays down rules on the implementation of the Union budget, including the rules on grants.

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<sup>11</sup> COM(2018) 473.

<sup>12</sup> 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 (OJ C 373, 20.12.2013, p. 1)

<sup>7</sup> ~~COM(2016) 605.~~

<sup>13</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).**

- 13) Regulation (EU) [2018/XXX] of the European Parliament and of the Council<sup>14</sup> establishes the "Customs" programme for cooperation in the field of customs to support the customs union and customs authorities. In order to preserve the coherence and horizontal coordination of cooperation actions, it is appropriate to implement all of them under one single legal act and set of rules. Therefore, only the purchase, maintenance and upgrade of the eligible customs control equipment should be supported under this Instrument while the Customs programme for cooperation in the field of customs should support related actions, such as cooperation actions for the assessment of needs or training relating to the equipment concerned.
- (14) In addition, and where appropriate, the Instrument should also support the purchase or upgrade of customs control equipment for testing new pieces or new functionalities in operational conditions before Member States start large-scale purchases of such new equipment. Testing in operational conditions should follow up in particular on the outcomes of research of customs control equipment in the framework of Regulation (EU) [2018/XXX]<sup>15</sup>. *The Commission should encourage joint procurement and testing of customs control equipment between Member States making use of the cooperation tools under the Customs programme.*

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<sup>14</sup> COM(2018) 442.

<sup>15</sup> COM(2018) 435

- (15) 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 Regulation [2018/XXX]<sup>16</sup> will **only financially support equipment of which the primary aim or effect is integrated border management, but will also allow its use for additional purposes such as customs controls**. On the other hand, the instrument for financial support for customs control equipment established by this Regulation will only financially **support** equipment **of which the primary aim or effect is** customs controls but will also allow its use 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 4(e) of Regulation (EU) 2016/1624<sup>17</sup>, 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 sharing between customs and other border authorities should not be systematic.*
- (16) By way of derogation from the Financial Regulation, funding of an action by several Union programmes or instruments should be possible in order to allow and support, where appropriate, cooperation and interoperability across domains. However, in such cases, the contributions may not cover the same costs in accordance with the principle of prohibition of double funding established by the Financial Regulation. *If a Member State has already been awarded or has received contributions from another Union programme or support from a Union fund for the acquisition of the same equipment, that contribution or support should be communicated to the Commission, in accordance with Article 191 of the Financial Regulation.*

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<sup>16</sup> COM(2018) 473

<sup>17</sup> 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).

**(16-a) Any funding in excess of the ceiling of the co-financing rate should be granted only in duly justified cases, that might include cases of joint procurement and of testing of customs control equipment between Member States.**

(17) In view of the rapid evolution of customs priorities, threats and technologies, work programmes should not span over long periods of time. At the same time, the need to establish annual work programmes increases the administrative burden for both the Commission and Member States without it being necessary for the implementation of the Instrument. Against that backdrop, work programmes should in principle cover more than one budgetary year, **but not more than three.**

(18) {In order to ensure uniform conditions for the implementation of the work programme under this Regulation, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) 182/2011 of the European Parliament and of the Council<sup>18</sup>.}

(19) Although central implementation is indispensable in order to achieve the specific objective of ensuring equivalent **results of** customs controls, given the technical nature of this Instrument, preparatory work is required at technical level. Therefore, implementation should be supported by assessments of needs that are dependent on national expertise and experience through the involvement of customs **authorities** of the Member States. Those assessments of needs should be based on a clear methodology including a minimum number of steps ensuring the collection of the *relevant* information. **The Commission should use this information to determine the allocation of the funds to Member States taking into consideration in particular the volume of trade, the relevant risks and the administrative capacity of the customs authorities to use and maintain the equipment, with a view to achieving the most efficient use of the customs control equipment financed under this Instrument. To contribute to budgetary discipline, the conditions for the prioritisation of grants should be clearly defined and based on such an assessment of needs.**

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<sup>18</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 (OJ L 55, 28.2.2011, p. 13).

- (20) To ensure regular monitoring and reporting, a proper framework for monitoring the results achieved by the Instrument and actions under it should be put in place. Such monitoring and reporting should be based on *quantitative and qualitative* indicators measuring the effects of the actions under the Instrument. Reporting requirements should include information on customs control equipment **where the cost of a piece of customs controls equipment exceeds the threshold set out in paragraph 4 of Article 12** ~~beyond a certain cost threshold.~~ **This information should be distinguished from the information provided to the general public and media in order to promote the actions and the results of the Instrument referred to in Article 16.**
- (21) Pursuant to paragraph 22 and 23 of the Inter-institutional agreement for Better Law-Making of 13 April 2016<sup>19</sup>, there is a need to evaluate this Instrument on the basis of information collected through specific monitoring requirements, while avoiding overregulation and administrative burdens, in particular on Member States. These requirements, where appropriate, can include measurable indicators, as a basis for evaluating the effects of the Instrument on the ground **in a comparable and complete manner.** **The interim and final evaluations, which should be performed no later than four years after the start of the implementation or completion of the Instrument respectively, should contribute to the efficient decision-making process concerning the financial support for customs control equipment under the next Multiannual Financial Frameworks. *It is therefore of the utmost importance for the interim and final evaluations to provide satisfactory and sufficient information and for them to be delivered in due time.*** In addition to the interim and final evaluations *of the Instrument*, **as part of the performance reporting system,** **annual progress reports** should be issued as well to monitor the implementation **of the Instrument and should be communicated to the European Parliament and the Council.** **Those reports should include a summary of the lessons learned and, where appropriate, of the obstacles encountered and shortfalls discovered in the context of the activities of the Instrument in the year in question.**

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<sup>19</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).

(22) {In order to respond appropriately to evolving policy priorities, threats and technologies, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission in respect of amending ~~the customs control purposes for actions eligible under the Instrument and~~ the list of indicators to measure the achievement of the specific objectives. 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. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.}



(23) [In accordance with ~~Regulation~~ **Regulations (EU, Euratom) 2018/1046<sup>20</sup> (the "Financial Regulation")** and (EU, Euratom) No 883/2013 of the European Parliament and of the Council<sup>21</sup> **and** Council ~~Regulation~~ **Regulations** (Euratom, EC) No 2988/95<sup>22</sup>, (Euratom, EC) No 2185/96<sup>23</sup> and (EU) 2017/1939<sup>24</sup>, the financial interests of the Union are to be protected through proportionate measures, including the prevention, detection, correction and investigation of irregularities, **including** fraud, the recovery of funds lost, wrongly paid or incorrectly used and, where appropriate, the imposition of administrative **penalties**. In particular, in accordance with ~~Regulation~~ **Regulations** (Euratom, **EC**) **No 2185/96 and (EU, Euratom)** No 883/2013, 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** the financial interests of the Union, as provided for in Directive (EU) 2017/1371 of the European Parliament and of the Council<sup>25</sup>. In accordance with the Financial Regulation, any person or entity receiving Union funds is to fully cooperate in the protection of the financial interests **of the Union**, grant the necessary rights and access to the Commission,

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<sup>20</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).**

<sup>21</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 L248, 18.9.2013, p. 1).

<sup>22</sup> Council Regulation (EC, Euratom) 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>23</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 L292, 15.11.96, p.2).

<sup>24</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 L283, 31.10.2017, p.1).

<sup>25</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).



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 ensure that any third parties involved in the implementation of Union funds grant equivalent rights.]

- (24) 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 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.] **Funding under this Instrument should be subject to the principles referred to in Article 188 of the Financial Regulation and should ensure the optimal use of financial resources in achieving its objectives.**
- (25) 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 objective 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.
- (26) Since the objective of this Regulation, which is to establish a Instrument that supports the customs union and customs authorities, cannot be sufficiently achieved by the Member States alone further to objective imbalances existing at geographical level amongst them, but can rather, by reason of the equivalent level and quality of **results of** custom **controls** that a coordinated approach and a centralised funding will help providing, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective,

*(26a) The recipients of Union funding should acknowledge the origin and ensure the visibility of the Union funding especially when promoting the actions and their results. Recipients should do this by providing coherent, effective and proportionate targeted information to multiple audiences, including the media and the public. Such information should show the added value of the Instrument in supporting the customs union, and in particular, how it helps customs authorities to fulfil their missions, as well as the efforts of the Commission to ensure budgetary transparency. Furthermore, in order to ensure transparency the Commission should regularly provide information to the public relating to the Instrument, its actions and results, referring to, inter alia, the work programmes referred to in Article 11.*

HAVE ADOPTED THIS REGULATION:

*CHAPTER I*

*GENERAL PROVISIONS*

*Article 1*

*Subject matter*

1. This Regulation establishes the Instrument for financial support for customs control equipment ('the Instrument'), as part of the Integrated Border Management Fund ('the Fund') to provide financial support for the purchase, maintenance and upgrade of customs control equipment.
2. Jointly with Regulation [2018/XXX] establishing, as part of the Integrated Border Management Fund, the instrument for financial support for border management and visa<sup>26</sup>, 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) 'customs authorities' means the authorities defined in point (1) of Article 5 of Regulation (EU) 952/2013;
- (2) 'customs controls' means the specific acts defined in point (3) of Article 5 of Regulation (EU) 952/2013;

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<sup>26</sup> COM(2018) 473.

- (3) 'customs control equipment' means equipment intended primarily for performing customs controls;
- (4) 'mobile customs control equipment' means any means of transport that, beyond its mobile capacities, is intended itself to be a piece of customs control equipment or is fully equipped with customs control equipment;
- (5) 'maintenance' means preventive, corrective and predictive interventions, including operational and functional checks, servicing, repair and overhaul but excluding upgrading, necessary for retaining or restoring a piece of customs control equipment to its specified operable condition to achieve its maximum useful life;
- (6) 'upgrade' means evolutive interventions necessary for bringing an existing piece of customs control equipment from an outdated to a state-of-the-art specified operable condition.

### *Article 3*

#### *Instrument objectives*

1. As part of the Integrated Border Management Fund ***and with a view to the long-term aim of harmonised application of customs controls by the Member States***, the Instrument has the general objective to support the customs union and customs authorities to protect the financial and economic interests of the Union and its Member States, to ensure security and safety within the Union and to protect the Union from illegal trade while facilitating legitimate business activity.
2. The Instrument has the specific objective of contributing to adequate and equivalent **results of** customs controls through the ~~fully~~ ***transparent*** purchase, maintenance and upgrade of relevant, state-of-the-art, ***such as secure, safe and environmental-friendly***, and reliable customs control equipment, **thereby supporting the customs authorities acting as one to protect the interests of the Union.**

## *Article 4*

### *Budget*

1. The financial envelope for the implementation of the Instrument for the period 2021 – 2027 shall be EUR [1 300 000 000] in current prices.
2. The amount referred to in paragraph 1 may also cover expenses for preparation, monitoring, control, audit, evaluation and other activities for managing the Instrument and evaluating the achievement of its objectives. It may moreover cover expenses relating to the studies, meetings of experts, information and communication actions, in so far as they are related to the objectives of the Instrument, as well as expenses linked to information technology networks focusing on information processing and exchange, including corporate information technology tools and other technical and administrative assistance needed in connection with the management of the Instrument.

## *Article 5*

### *Implementation and forms of EU funding*

1. The Instrument shall be implemented in direct management in accordance with the Financial Regulation.
2. The Instrument may provide funding in any of the forms laid down in the Financial Regulation and in particular by means of grants.
3. When the action supported involves the purchase or upgrade of equipment, the Commission shall set up a coordination mechanism ensuring efficiency and interoperability between all the equipment purchased with the support of Union programmes and instruments.

## CHAPTER II

### ELIGIBILITY

#### Article 6

##### *Eligible actions*

1. In order for actions to be eligible for funding under this Instrument, the actions must comply with the following requirements:
  - (a) implement the objectives referred to in Article 3;
  - (b) support the purchase, maintenance and upgrade of customs controls equipment **including innovative detection technology equipment**, that has one or more of the following customs control purposes:
    - (1) non-intrusive inspection;
    - (2) indication of hidden objects on humans;
    - (3) radiation detection and nuclide identification;
    - (4) analysis of samples in laboratories;
    - (5) sampling and field analysis of samples;
    - (6) handheld search.

Annex 1 lays down an indicative list of customs control equipment that may be used to achieve the customs control purposes referred to in points (1) to (6).

2. ~~By way of derogation from paragraph 1, in~~ ***In*** duly justified cases, actions ***under paragraph 1*** may also cover the **transparent** purchase, maintenance and upgrade of customs controls equipment for testing new pieces or new functionalities in operational conditions.
3. The Commission is empowered to adopt delegated acts in accordance with Article 14 to amend ~~the customs control purposes set out in point (b) of paragraph 1 as well as Annex 1~~ where such review is considered necessary.
4. Customs control equipment financed under this Instrument ***should be used primarily for customs controls, but*** may ***also*** be used for ***additional*** purposes ~~additional to customs controls~~, including for control of persons in support of the national border management authorities and investigation. ***Such customs control equipment shall not be shared between customs and other border authorities systematically.***
- 4.a ***The Commission shall encourage joint procurement and testing of customs control equipment between Member States***

#### *Article 7*

##### *Eligible entities*

By way of derogation from Article 197 of the Financial Regulation, the eligible entities shall be the customs authorities of Member States where they provide the information necessary for the assessments of needs as set out in Article 11(3).

#### *Article 8*

##### *Co-financing rate*

1. The Instrument may finance up to 80% of the total eligible costs of an action.
2. Any funding in excess of that ceiling shall only be granted in duly justified exceptional circumstances.

Article 9

Eligible costs

1. **The costs directly related to actions referred to in Article 6 shall be** eligible for funding under the Instrument.

**The following costs shall not be eligible for funding under the Instrument:**

- (a) costs related to the purchase of land;
- (aa)→cost relating to training or the upgrading of skills, other than the introductory training included in the purchase or upgrade contract;**
- (b) costs relating to infrastructure, such as buildings or outdoor facilities, as well as to furniture;
- (c) costs associated with electronic systems, with the exception of software *and software updates* directly necessary to use the customs control equipment *and with the exception of the electronic software and programming necessary to inter-link existing software with the customs control equipment*;
- (d) costs of networks, such as secured or unsecured communication channels, or subscriptions, *with the exception of networks or subscriptions exclusively necessary to use the customs control equipment*;
- (e) costs of transport means, such as vehicles, aircrafts or ships, with the exception of mobile customs control equipment;
- (f) costs of consumables, including reference or calibration material, for customs control equipment;
- (g) costs relating to personal protective equipment.



## CHAPTER III

### GRANTS

#### Article 10

##### *Award, complementarity and combined funding*

1. Grants under the Instrument shall be awarded and managed in accordance with Title VIII of the Financial Regulation.
2. In accordance with Article 195(f) of the Financial Regulation, grants shall be awarded without a call for proposals to the eligible entities referred to in Article 7.
3. By way of derogation from Article 191 of the Financial Regulation, an action that has received a contribution from the Customs programme for cooperation in the field of customs established by Regulation (EU) [2018/XXX]<sup>27</sup> or from any other Union programme may also receive a contribution under the Instrument, 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.

## CHAPTER IV

### PROGRAMMING, MONITORING AND EVALUATION

#### Article 11

##### *Work programme*

1. The Instrument shall be implemented by work programmes referred to in Article 110(2) of the Financial Regulation.
2. {The work programmes shall be adopted by the Commission by means of an implementing act. That implementing act shall be adopted in accordance with the examination procedure referred to in Article 15.}

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<sup>27</sup> COM(2018) 442

3. The preparation of the work programmes referred to in paragraph 1 shall be supported by an assessment of needs *of customs authorities of the Member States*, which shall consist of the following:
- (a) a common categorisation of border crossing points;
  - (b) ~~an~~ **a comprehensive description** ~~inventory~~ of available customs control equipment;
  - (c) ~~a common definition~~ **list** ~~of a minimum and optimal standard~~ of customs control equipment **that should be available**, by reference to the category of border crossing points and
  - (d) ~~an detailed~~ estimate of financial needs.

The assessment of needs shall result from actions carried out under the Customs 2020 programme established by Regulation (EU) No 1294/2013 of the European Parliament and of the Council<sup>28</sup> or under the Customs programme for cooperation in the field of customs established by Regulation (EU) [2018/XXX]<sup>29</sup> and shall be updated regularly ~~and at a minimum~~ **at least** every 3 years.

## *Article 12*

### *Monitoring and reporting*

1. Indicators to report on progress of the Instrument towards the achievement of the general and specific objectives set out in Article 3 are set out in Annex 2.
2. To ensure effective assessment of progress of the Instrument towards the achievement of its objectives, the Commission is empowered to adopt delegated acts in accordance with Article 14 to amend Annex 2 to review or complement the indicators where considered necessary and to supplement this Regulation with provisions on the establishment of a monitoring and evaluation framework.

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<sup>28</sup> Regulation (EU) No 1294/2013 of the European Parliament and of the Council of 11 December 2013 establishing an action programme for customs in the European Union for the period 2014-2020 (Customs 2020) and repealing Decision No 624/2007/EC (OJ L 347, 20.12.2013, p. 209).

<sup>29</sup> COM(2018) 442.

3. The performance reporting system shall ensure that data for monitoring the implementation and results of the Instrument are collected efficiently, effectively, and in a timely manner. To that end, proportionate reporting requirements shall be imposed on recipients of Union funds.
4. The reporting requirements referred to in paragraph 3 shall include at least the annual communication to the Commission of the following information where the cost of a piece of customs control equipment exceeds EUR 10 000 exclusive of taxes:
  - (a)→ **a detailed list** of the customs control equipment **financed under the Instrument**;
  - (e**b**)→ information on the use of the customs control equipment **and the related results**, **supported with the relevant statistics where appropriate.**

### *Article 13*

#### *Evaluation*

1. Evaluations shall be carried out in a timely manner to feed into the decision-making process.
2. The interim evaluation of the Instrument shall be performed once there is sufficient information available about the implementation of the Instrument, but no later than four years after the start of the implementation of the Instrument.
3. At the end of the implementation of the Instrument, but no later than four years after the end of the period specified in Article 1, a final evaluation of the Instrument shall be carried out by the Commission.
4. The Commission shall communicate the conclusions of the evaluations, accompanied by its observations, to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions.

## CHAPTER V

### EXERCISE OF THE DELEGATION AND COMMITTEE PROCEDURE

#### Article 14

##### *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 6(3) and 12(2) shall be conferred on the Commission until 31 December 2028.}
3. {The delegation of power referred to in Articles 6(3) and 12(2) may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of 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 notify it simultaneously to the European Parliament and to the Council.
6. {A delegated act adopted pursuant to Articles 6(3) and 12(2) shall enter into force if no objection has been expressed either by the European Parliament or by the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council 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 of the Council.}

*{Article 15*

*Committee procedure}*

{The Commission shall be assisted by the “Customs Programme Committee” referred to in Article 18 of Regulation (EU) [2018/XXX]<sup>30</sup>.}

{Where reference is made to this paragraph, Article 5 of Regulation (EU) 182/2011 shall apply.}

*CHAPTER VI*

*TRANSITIONAL AND FINAL PROVISIONS*

*Article 16*

*Information, communication and publicity*

1. The recipients of Union funding shall acknowledge the origin 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.
2. The Commission shall implement information and communication actions relating to the Instrument, and its actions and results. Financial resources allocated to the Instrument shall also contribute to the corporate communication of the political priorities of the Union, as far as they are related to the objectives referred to in Article 3.

*Article 17*

*Transitional provisions*

1. If necessary, appropriations may be entered in the budget beyond 2027 to cover the expenses provided for in Article 4(2), to enable the management of actions not completed by 31 December 2027.

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<sup>30</sup> COM(2018) 442.

*Article 18*

*Entry into force*

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

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

## ANNEX 1

### Indicative list of customs control equipment in relation to customs control purpose referred to in Article 6(1)(b)

CUSTOMS CONTROL PURPOSE	CUSTOMS CONTROL EQUIPMENT	
	CATEGORY	APPLICATION
Non-intrusive inspection	X-Ray scanner - High energy	Containers, trucks, rail wagons <i>and vehicles</i>
	X-ray scanner - Low energy	Pallets, boxes and parcels
		Passenger baggage
		<i>Vehicles</i>
	X-ray backscatter	Containers
		Trucks
		Vehicles
	Other	Automatic Number Plate / Container Recognition Systems
		Vehicle weighting scales
		Forklifts and similar mobile customs control equipment
Indication of hidden objects on humans <sup>31</sup>	X-ray <i>based</i> backscatter portal	Mainly used in airports to detect hidden objects on humans (drugs, explosives, cash)
	Body scanner	
	<i>Millimetre wave-based security scanner</i>	

<sup>31</sup> Subject to applicable legislative provisions and other recommendations as regards the protection of health and the respect of privacy.

<b>CUSTOMS CONTROL PURPOSE</b>	<b>CUSTOMS CONTROL EQUIPMENT</b>	
Radiation detection and nuclide identification	Radiological and Nuclear Detection	Personal Radiation Monitor/detector (PRM) Handheld Radiation detector Isotope Identification Device (RIID) Radiation Portal Monitor (RPM) Spectrometric Portal Monitor for isotope identification (SPM)
Analysis of samples in laboratories	Identification, quantification and verification of all possible goods	Gas and liquid chromatography (GC, LC, HPLC...) Spectrometry and techniques combined with spectrometry (IR, Raman, UV-VIS, Fluorescence, GC-MS...) X-Ray equipment (XRF...) NMR spectrometry and Stable isotope analyses Other laboratory equipment (AAS, Distillation Analyser, DSC, Electrophoresis, Microscope, LSC, Smoking machine...)



CUSTOMS CONTROL PURPOSE	CUSTOMS CONTROL EQUIPMENT	
	CATEGORY	APPLICATION
Sampling and field analysis of samples	Trace detection based on Ion Mobility Spectrometry (IMS)	Portable equipment to screen traces of specific threat materials
	Canine trace detection	Applied to a range of risks on small and larger objects
	Sampling	Tools to take samples, fume hood, glovebox
	Mobile laboratories	Vehicle fully housing equipment for field analysis of samples
	[Analysis of organic materials, metals and alloys] Handheld detectors	Chemical colorimetric tests
		Raman spectroscopy
		Infrared spectroscopy
		X-ray fluorescence
		Gas detectors for containers
	Handheld search	Personal hand tools
Mechanics tool kit		
Telescoping mirror		
Devices		Endoscope
		Stationary or handed metal detector
		Cameras to check the under-side of vehicles
		Ultrasonic device
		Density meter
Other		Underwater search

## ANNEX 2

### **Indicators**

Specific objective: Contribute to equivalent and adequate customs controls through the purchase, maintenance and upgrade of relevant, state-of-the-art and reliable customs control equipment

#### **1. Equipment available**

- (a) Availability at land Border Crossing Points of customs control equipment meeting agreed standards (by type of equipment)
  - (b) Availability at sea Border Crossing Points of customs control equipment meeting agreed standards (by type of equipment)
  - (c) Availability at air Border Crossing Points of customs control equipment meeting agreed standards (by type of equipment)
  - (d) Availability at postal Border Crossing Points of customs control equipment meeting agreed standards (by type of equipment)
  - (e) Availability at rail Border Crossing Points of customs control equipment meeting agreed standards (by type of equipment)
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