

## III

(Preparatory acts)

## COUNCIL

## POSITION (EU) No 2/2021 OF THE COUNCIL AT FIRST READING

**with a view to the adoption of a Regulation of the European Parliament and of the Council establishing the Customs programme for cooperation in the field of customs and repealing Regulation (EU) No 1294/2013**

**Adopted by the Council on 1 March 2021**

(2021/C 86/01)

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>(1)</sup>,

Acting in accordance with the ordinary legislative procedure <sup>(2)</sup>,

Whereas:

- (1) The Customs 2020 programme set up under Regulation (EU) No 1294/2013 <sup>(3)</sup> and its predecessor programmes have significantly contributed to facilitating and enhancing customs cooperation between customs authorities, as well as to building their administrative, human and information technology (IT) capacity. Since many of the activities of the customs authorities are of a cross-border nature, a more effective and efficient way of developing such cooperation is to offer Member States a framework within which it can take place by establishing a customs programme at Union level, implemented by the Commission. Moreover, the Customs 2020 programme has proved to be cost-efficient and has added real value to other customs cooperation frameworks set up on a bilateral or multilateral basis. In addition, the Customs 2020 programme has contributed to safeguarding the financial interests of the Union and of the Member States by supporting the effective collection of customs duties. Furthermore, harmonised customs procedures are important to achieve equivalent results in the prevention of fraud and of illegal cross-border flows of goods. It is therefore appropriate, efficient and in the interest of the Union to continue financing activities in the field of customs cooperation by establishing a new programme, the Customs programme ('the Programme').

<sup>(1)</sup> OJ C 62, 15.2.2019, p. 45.

<sup>(2)</sup> Position of the European Parliament of 16 April 2019 (not yet published in the Official Journal) and position of the Council at first reading of 1 March 2021. Position of the European Parliament of ... (not yet published in the Official Journal).

<sup>(3)</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).

- (2) For 50 years, the customs union has been one of the cornerstones of the Union, which is one of the largest trading blocks in the world. The customs union is a significant example of successful Union integration, and is essential for the proper functioning of the internal market for the benefit of both businesses and citizens. The customs union has evolved considerably over this period and customs authorities are successfully carrying out a wide range of tasks at the borders. Working together, they strive to facilitate legitimate and fair trade, reduce bureaucracy, collect revenue for national and Union budgets, and help to protect the citizens against terrorist, health, environmental and other threats. In particular, by introducing a common risk management framework at Union level and by controlling cash flows to combat money laundering and terrorist financing, the customs authorities play an important role in the fight against terrorism, organised crime and unfair competition. Given their extensive mandate, the customs authorities are effectively the leading authorities for the control of goods at the Union's external borders. A stronger and a more ambitious Union can only be achieved if the necessary resources are available. In that context, the Programme should not only cover customs cooperation, but should also provide support for the wider mission of customs authorities, as provided for in Article 3 of Regulation (EU) No 952/2013 of the European Parliament and of the Council<sup>(4)</sup>, namely the supervision of the Union's international trade, thereby contributing to the implementation of the external aspects of the internal market, of the common commercial policy and of the other common Union policies having a bearing on trade, and to overall supply chain security.

The legal basis of this Regulation should therefore cover customs cooperation as provided for in Article 33 of the Treaty on the Functioning of the European Union (TFEU), the internal market, as provided for in Article 114 TFEU and the common commercial policy, as provided for in Article 207 TFEU.

- (3) The Programme should assist the Member States and the Commission by providing a framework for actions that aim to support the customs union and the customs authorities working together and acting as one; to contribute to protecting the financial and economic interests of the Union and its Member States; to ensure the security and safety of the Union and its residents, thereby contributing to consumer protection; to protect the Union from unfair and illicit commercial practices, while facilitating legitimate business activity; and to facilitate legitimate trade so that businesses and citizens can benefit from the full potential of the internal market and world trade.
- (4) Customs is a dynamic policy area facing new challenges, such as globalisation, new patterns in fraud and smuggling, and digitalisation. These challenges increase the demand for support to customs authorities and call for innovative solutions. They further underline the need to reinforce cooperation between customs authorities.
- (5) In order to ensure cost-effectiveness, the Programme should exploit possible synergies with other Union measures in related fields, such as the Fiscalis programme, which is to be established by a Regulation of the European Parliament and of the Council establishing the 'Fiscalis' programme for cooperation in the field of taxation, the instrument for financial support for customs control equipment, which is to be established by 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 (the 'Customs Control Equipment Instrument Regulation'), the Union Anti-Fraud Programme, which is to be established by a Regulation of the European Parliament and of the Council establishing the Union Anti-Fraud Programme, the instrument for financial support for border management and visa, which is to be established by 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 (BMVI), the Internal Security Fund, which is to be established by a Regulation of the European Parliament and of the Council establishing the Internal Security Fund, the Single Market Programme, which is to be established by a Regulation of the European Parliament and of the Council establishing the Programme for the internal market, competitiveness of enterprises, including small and medium-sized enterprises, the area of plants,

<sup>(4)</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).

animals, food and feed, and European statistics (Single Market Programme), the Recovery and Resilience Facility established by Regulation (EU) 2021/241 of the European Parliament and of the Council <sup>(5)</sup> and the Technical Support Instrument established by Regulation (EU) 2021/240 of the European Parliament and of the Council <sup>(6)</sup>.

- (6) In view of the importance of tackling climate change, and in line with the Union's commitments to implement the Paris Agreement <sup>(7)</sup> and to achieve the United Nations Sustainable Development Goals of the 2030 Agenda for Sustainable Development adopted on 25 September 2015, the actions under this Regulation should contribute to the achievement of the Union's goal of spending at least 30 % of the total amount of Union budget on supporting climate objectives and of the Union's ambition to spend 7,5 % of the annual Union budget, on biodiversity in 2024 and 10 % in both 2026 and 2027, while considering the existing overlaps between climate and biodiversity goals.
- (7) This Regulation lays down a financial envelope for the Programme, which is to constitute the prime reference amount, within the meaning of point 18 of the Interinstitutional Agreement of 16 December 2020 between the European Parliament, the Council of the European Union and the European Commission on budgetary discipline, on cooperation in budgetary matters and on sound financial management, as well as on new own resources, including a roadmap towards the introduction of new own resources <sup>(8)</sup>, for the European Parliament and the Council during the annual budgetary procedure. To be considered eligible for funding, any unforeseen expenditure should be directly related to the objectives of the Programme. The financial envelope of the Programme should cover necessary and duly justified expenses for managing the Programme and evaluating its performance, provided that those activities are related to the general and specific objectives of the Programme.
- (8) In order to support the process of accession and association by third countries, the Programme should, if certain conditions are fulfilled, be open to the participation of acceding countries, candidate countries, potential candidates and countries covered by the European Neighbourhood Policy. It might also be open to other third countries, in accordance with the conditions laid down in specific agreements between the Union and those countries covering their participation in any Union programme.
- (9) Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council <sup>(9)</sup> (the 'Financial Regulation') applies to the Programme. The Financial Regulation lays down rules on the implementation of the Union budget, including the rules on grants, prizes, procurement, indirect management, financial instruments, budgetary guarantees, financial assistance and the reimbursement of external experts.
- (10) Horizontal financial rules adopted by the European Parliament and the Council on the basis of Article 322 TFEU apply to this Regulation. Those 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 include a general regime of conditionality for the protection of the Union budget.
- (11) The actions which applied under the Customs 2020 programme have proved to be adequate and should therefore be maintained. In order to provide greater simplicity and flexibility in the execution of the Programme and thereby better deliver on its objectives, the actions should be defined only in terms of overall categories with a list of illustrative examples of concrete activities. Through cooperation and capacity building, the Programme should also

<sup>(5)</sup> Regulation (EU) 2021/241 of the European Parliament and of the Council of 12 February 2021 establishing the Recovery and Resilience Facility (OJ L 57, 18.2.2021, p. 17).

<sup>(6)</sup> Regulation (EU) 2021/240 of the European Parliament and of the Council of 10 February 2021 establishing a Technical Support Instrument (OJ L 57, 18.2.2021, p. 1).

<sup>(7)</sup> OJ L 282, 19.10.2016, p. 4.

<sup>(8)</sup> OJ L 433I, 22.12.2020, p. 28.

<sup>(9)</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).

promote and support the uptake and leverage of innovation to further improve the capabilities to deliver on core customs priorities. Actions financed by this Programme should be terminated or adjusted in order to make them more effective or relevant if they prove to be inadequate at any point in time.

- (12) The Customs Control Equipment Instrument Regulation will be soon adopted. In order to preserve the coherence and horizontal coordination of all cooperation actions relating to customs and customs control equipment, it is appropriate to implement all such actions under a single legal act, namely, this Regulation, containing a single set of rules. Therefore, the instrument for financial support for customs control equipment should support only the purchase, maintenance and upgrade of the eligible customs control equipment, while this Programme should support all other related actions, such as cooperation actions for the assessment of equipment needs or, where appropriate, training in relation to the equipment purchased.
- (13) The exchange of customs information and other related information is key for the proper functioning of customs and goes well beyond the exchanges within the customs union. Adaptations of, or extensions to, the European electronic systems to enable cooperation with third countries that are not participating in the Programme and with international organisations could be of interest to the Union. Therefore, when duly justified by such an interest, the corresponding adaptations or extensions to the European electronic systems should be eligible for funding under the Programme.
- (14) Considering the importance of globalisation, the Programme should continue to provide for the possibility of involving external experts within the meaning of Article 238 of the Financial Regulation. Such external experts should mainly include representatives of governmental authorities, including governmental authorities of third countries that are not participating in the Programme, as well as academics and representatives of international organisations, of economic operators or of civil society. The selection of external experts for expert groups should be based on Commission Decision of 30 May 2016 establishing horizontal rules on the creation and operation of Commission expert groups. External experts participating in their personal capacity in *ad hoc* events under the Programme, such as one-off meetings and conferences, should be selected by the Commission, including from experts proposed by the participating countries. It is necessary to ensure that external experts who are appointed in their personal capacity and required to act independently and in the public interest act impartially and that there is no possible conflict of interest with their professional responsibilities. Information about the selection of all external experts and their participation should be publicly available. The objective of ensuring a balanced representation of stakeholders and the principle of gender equality should be taken into account when selecting external experts.
- (15) In accordance with the Commission's commitment to ensure the coherence and simplification of funding programmes, set out in its Communication of 19 October 2010 entitled 'The EU Budget Review', resources should be shared with other Union funding instruments if the actions envisaged under the Programme pursue objectives that are common to various funding instruments, provided that this does not result in double financing. Actions under the Programme should ensure coherence in the use of the Union's resources supporting the customs union and customs authorities.
- (16) IT capacity-building actions are expected to attract the greatest share of the budget under the Programme. Among those IT capacity-building actions, top priority should be given to those actions related to electronic systems that are necessary for the implementation of the customs union and for customs authorities to carry out their mission. The common and national components of the European electronic systems should be defined in this Regulation. Combinations of common and national components are possible. Moreover, the scope of actions and the responsibilities of the Commission and the Member States should be clearly defined.
- (17) This Regulation should be implemented by means of work programmes. In view of the mid- to long-term nature of the objectives pursued and building on experience gained over time, it should be possible for work programmes to cover several years. A shift from annual to multiannual work programmes would reduce the administrative burden for both the Commission and the Member States. Multiannual work programmes should be for a maximum of three years.

- (18) The actions implemented under the Programme should take into account the findings and recommendations of the European Court of Auditors in the field of customs, in particular the special report No 19/2017 of 5 December 2017 entitled 'Import procedures: shortcomings in the legal framework and an ineffective implementation impact the financial interests of the EU', and the special report No 26/2018 of 10 October 2018 entitled 'A series of delays in Customs IT systems: what went wrong?'
- (19) In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council <sup>(10)</sup>.
- (20) Pursuant to paragraphs 22 and 23 of the Interinstitutional Agreement of 13 April 2016 on Better Law-Making <sup>(11)</sup>, the Programme should be evaluated on the basis of information collected in accordance with specific monitoring requirements, while avoiding an administrative burden, in particular on Member States, and overregulation. Those requirements, where appropriate, should include measurable indicators as a basis for evaluating, in a comparable and complete manner, the effects of the Programme on the ground. The interim and final evaluations, which should be performed no later than four years after the start of the implementation and the completion of the Programme, respectively, should contribute to the efficient decision-making process concerning cooperation in the field of customs under the next multiannual financial frameworks. It is therefore of the utmost importance that the interim and final evaluations include satisfactory and sufficient information and that those evaluations are delivered in due time. In addition to the interim and final evaluations of the Programme, annual progress reports should, as part of the performance reporting system, be issued to monitor the implementation of the Programme. Those reports should include a summary of the lessons learnt and, where appropriate, of the obstacles and shortfalls encountered, in the context of the activities of the Programme that took place in the year in question. Those annual progress reports should be communicated to the European Parliament and to the Council.
- (21) In order to respond appropriately to changes in policy priorities, the power to adopt acts in accordance with Article 290 TFEU should be delegated to the Commission in respect of amending the list of indicators to measure the achievement of the specific objectives of the Programme and in respect of supplementing this Regulation with provisions on the establishment of a monitoring and evaluation framework. It is of particular importance that the Commission carry 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 of 13 April 2016 on Better Law-Making. 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.
- (22) In accordance with the Financial Regulation, Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council <sup>(12)</sup> and Council Regulations (EC, Euratom) No 2988/95 <sup>(13)</sup>, (Euratom, EC) No 2185/96 <sup>(14)</sup> and (EU) 2017/1939 <sup>(15)</sup>, the financial interests of the Union are to be protected by means of proportionate measures, including measures relating to the prevention, detection, correction and investigation of irregularities, including fraud, to the recovery of funds lost, wrongly paid or incorrectly used, and, where appropriate, to the imposition of

<sup>(10)</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).

<sup>(11)</sup> OJ L 123, 12.5.2016, p. 1.

<sup>(12)</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>(13)</sup> Council Regulation (EC, Euratom) No 2988/95 of 18 December 1995 on the protection of the European Communities financial interests (OJ L 312, 23.12.1995, p. 1).

<sup>(14)</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>(15)</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).

administrative penalties. In particular, in accordance with Regulations (Euratom, EC) No 2185/96 and (EU, Euratom) No 883/2013, the European Anti-Fraud Office (OLAF) has the power to 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. The European Public Prosecutor's Office (EPPO) is empowered, in accordance with Regulation (EU) 2017/1939, to investigate and prosecute criminal offences affecting the financial interests of the Union as provided for in Directive (EU) 2017/1371 of the European Parliament and of the Council <sup>(16)</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, OLAF, the Court of Auditors, and, in respect of those Member States participating in enhanced cooperation pursuant to Regulation (EU) 2017/1939, the EPPO, and ensure that any third parties involved in the implementation of Union funds grant equivalent rights.

- (23) Third countries may participate in the Programme on the basis of a decision adopted pursuant to an international agreement or on the basis of other legal instruments. A specific provision should be introduced in this Regulation requiring third countries to grant the necessary rights and access required for the authorising officer responsible, OLAF and the Court of Auditors to comprehensively exercise their respective competences.
- (24) The eligible costs should be determined by reference to the nature of the eligible actions and including, inter alia, travel and subsistence costs for participants to meetings and similar events or costs linked to the organisation of events. Funding under the Programme should be subject to the principles referred to in the Financial Regulation, such as equal treatment, proportionality, transparency and should ensure the optimal use of its 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 objectives of the actions and to deliver the intended results, taking into account, in particular, the costs of controls, the administrative burden and the expected risk of non-compliance. Those types of financing and methods of implementation 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, namely the establishment of a Union programme for cooperation in the field of customs, cannot be sufficiently achieved by the Member States but can rather, by reason of its scale and effects, 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.
- (27) In order to ensure continuity in providing support in the relevant policy area and to allow implementation to start from the beginning of the multi-annual financial framework 2021-2027, this Regulation should enter into force as a matter of urgency and should apply, with retroactive effect, from 1 January 2021.
- (28) This Regulation replaces Regulation (EU) No 1294/2013, which should therefore be repealed,

<sup>(16)</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).

HAVE ADOPTED THIS REGULATION:

#### CHAPTER I

##### **General Provisions**

#### Article 1

##### **Subject matter**

This Regulation establishes the Customs programme for cooperation in the field of customs (the 'Programme') for the period from 1 January 2021 to 31 December 2027. The duration of the Programme shall be aligned to the duration of the multiannual financial framework.

This Regulation lays down the objectives of the Programme, the budget for the period 2021 to 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 apply:

- (1) 'customs authorities' means the customs authorities as defined in point (1) of Article 5 of Regulation (EU) No 952/2013;
- (2) 'European electronic systems' means electronic systems necessary for the customs union and for the execution of the mission of customs authorities, in particular the electronic systems referred to in Article 16(1) and Articles 278 and 280 of Regulation (EU) No 952/2013, Article 8 of Regulation (EU) 2019/880 of the European Parliament and of the Council <sup>(17)</sup>, and in other provisions of Union law governing electronic systems for customs purposes, including international agreements, such as the Customs Convention on the international transport of goods under cover of TIR carnets (TIR Convention) <sup>(18)</sup>;
- (3) 'common component' means a component of the European electronic systems, developed at Union level, which is available for all Member States or identified as common by the Commission for reasons of efficiency, security and rationalisation;
- (4) 'national component' means a component of the European electronic systems, developed at national level, which is available in the Member State that created that component or contributed to its joint creation;
- (5) 'third country' means a country that is not a Member State of the Union.

#### Article 3

##### **Programme objectives**

1. The general objective of the Programme is to support the customs union and customs authorities working together and acting as one 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 unfair and illegal trade, while facilitating legitimate business activity.
2. The specific objectives of the Programme are to support:
  - (a) the preparation and uniform implementation of customs legislation and policy;
  - (b) customs cooperation;

<sup>(17)</sup> Regulation (EU) 2019/880 of the European Parliament and of the Council of 17 April 2019 on the introduction and the import of cultural goods (OJ L 151, 7.6.2019, p. 1).

<sup>(18)</sup> OJ L 165, 26.6.2009, p. 3.

- (c) administrative and IT capacity building, including human competency and training, as well as the development and operation of European electronic systems;
- (d) innovation in the area of customs policy.

#### *Article 4*

#### **Budget**

1. The financial envelope for the implementation of the Programme for the period 2021 – 2027 shall be EUR 950 000 000 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 Programme and evaluating the achievement of its objectives. It may also cover expenses linked to studies, meetings of experts, information and communication actions that are related to the objectives of the Programme, 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 Programme.

#### *Article 5*

#### **Participation of third countries in the Programme**

The Programme shall be open to the participation of the following third countries:

- (a) acceding countries, candidate countries and potential candidates, in accordance with the general principles and general terms and conditions for the participation of those countries in Union programmes established in the respective framework agreements and Association Council decisions, or in similar agreements and in accordance with the specific conditions laid down in agreements between the Union and those countries;
- (b) European Neighbourhood Policy countries, in accordance with the general principles and general terms and conditions for the participation of those countries in Union programmes established in the respective framework agreements and Association Council decisions or in similar agreements and in accordance with the specific conditions laid down in agreements between the Union and those countries;
- (c) other third countries, in accordance with the conditions laid down in a specific agreement covering the participation of the third country to any Union programme, provided that the agreement:
  - (i) ensures a fair balance as regards the contributions and benefits of the third country participating in the Union programmes;
  - (ii) lays down the conditions of participation in the programmes, including the calculation of financial contributions to individual programmes, and their administrative costs;
  - (iii) does not confer on the third country any decision-making power in respect of the Union programme;
  - (iv) guarantees the rights of the Union to ensure sound financial management and to protect its financial interests.

The contributions referred to in point (c)(ii) of the first paragraph shall constitute assigned revenues in accordance with Article 21(5) of the Financial Regulation.

#### *Article 6*

#### **Implementation and forms of Union funding**

1. The Programme shall be implemented under direct management in accordance with the Financial Regulation.



2. The Programme may provide funding in any of the forms laid down in the Financial Regulation, in particular by means of grants, prizes, procurement and the reimbursement of travel and subsistence expenses incurred by external experts.

## CHAPTER II

### **Eligibility**

#### Article 7

### **Eligible actions**

1. Only actions implementing the objectives set out in Article 3 shall be eligible for funding.
2. Actions complementing or supporting the actions implementing the objectives set out in the Customs Control Equipment Instrument Regulation shall also be eligible for funding under the Programme.
3. The actions referred to in paragraphs 1 and 2 shall include the following:
  - (a) meetings and similar *ad hoc* events;
  - (b) project-based structured collaboration, such as collaborative IT development by a group of Member States;
  - (c) IT capacity-building actions, in particular the development and operation of European electronic systems;
  - (d) human-competency and other capacity-building actions, including training and exchange of best practices;
  - (e) support actions and other actions, including:
    - (i) studies;
    - (ii) innovation activities, in particular proof-of-concepts, pilot projects, prototyping initiatives, smart data mining and collaboration among systems;
    - (iii) jointly developed communication actions;
    - (iv) any other actions provided for in the work programmes referred to in Article 12, which are necessary for attaining, or are in support of, the objectives set out in Article 3.

Annex I contains a non-exhaustive list of possible forms of actions as referred to in points (a), (b) and (d) of the first subparagraph.

4. Actions consisting in the development, deployment, maintenance and operation of adaptations of or extensions to the common components of the European electronic systems to enable cooperation with third countries that are not participating in the Programme or with international organisations shall be eligible for funding when they are of interest to the Union. The Commission shall put in place the necessary administrative arrangements, which may include a requirement for the third parties concerned to contribute financially to those actions.

5. Where an IT capacity-building action as referred to in point (c) of the first subparagraph of paragraph 3 of this Article concerns the development and operation of a European electronic system, only the costs related to the responsibilities conferred on the Commission pursuant to Article 11(2) shall be eligible for funding under the Programme. Member States shall bear the costs related to the responsibilities conferred on them pursuant to Article 11(3).

*Article 8***External experts**

1. Where beneficial for the completion of an action implementing the objectives set out in Article 3, representatives of governmental authorities, including those from third countries that are not participating in the Programme, academics and representatives of international and other relevant organisations, representatives of economic operators, representatives of organisations representing economic operators and representatives of civil society may take part as external experts in such action.
2. Costs incurred by the external experts referred to in paragraph 1 of this Article shall be eligible for reimbursement under the Programme in accordance with Article 238 of the Financial Regulation.
3. External experts for expert groups shall be selected by the Commission, including from experts proposed by the Member States.

External experts participating in their personal capacity in ad-hoc events under the Programme, such as one-off meetings and conferences, shall be selected by the Commission, including from experts proposed by participating countries.

External experts shall be selected on the basis of their skills, experience and knowledge relevant to the specific action and according to needs. The Commission shall assess, inter alia the impartiality of external experts who are appointed in their personal capacity and required to act independently and in the public interest, and the absence of conflicts of interest with their professional responsibilities.

*CHAPTER III***Grants***Article 9***Award, complementarity and combined funding**

1. Grants under the Programme shall be awarded and managed in accordance with Title VIII of the Financial Regulation.
2. An action that has received a contribution under the Programme may also receive a contribution from another Union programme, provided that the contributions do not cover the same costs. The rules of the relevant Union programme shall apply to the corresponding contribution to the action. The cumulative funding shall not exceed the total eligible costs of the action. 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.
3. In accordance with point (f) of the first paragraph of Article 195 of the Financial Regulation, grants shall be awarded without a call for proposals where the eligible entities are customs authorities of participating countries, provided that the conditions set out in Article 5 of this Regulation are met.
4. The work of the evaluation committee referred to in Article 150 of the Financial Regulation shall be based on the general principles applicable to grants laid down in Article 188 of the Financial Regulation and in particular, on the principles of equal treatment and transparency laid down in points (a) and (b) of Article 188 of the Financial Regulation, as well as on the principle of non-discrimination.
5. The evaluation committee shall evaluate proposals on the basis of the award criteria, taking into account, where appropriate, the relevance of the proposed action in view of the objectives pursued, the quality of the proposed action, its impact, including its economic, social and environmental impact, and its budget and cost-effectiveness.

*Article 10***Co-financing rate**

1. By way of derogation from Article 190 of the Financial Regulation, the Programme may finance up to 100 % of the total eligible costs of an action.
2. The applicable co-financing rate where actions require the awarding of grants shall be set out in the multiannual work programmes referred to in Article 12.

## CHAPTER IV

***Specific provisions for IT capacity-building actions****Article 11***Responsibilities**

1. The Commission and the Member States shall jointly, and in accordance with the relevant provisions of Union law referred to in the definition in point (2) of Article 2, ensure the development and operation of the European electronic systems, including their design, specification, conformance testing, deployment, maintenance, evolution, modernisation, security, quality assurance and quality control.
2. The Commission shall, in particular, ensure the following:
  - (a) the development and operation of common components;
  - (b) the overall coordination of the development and operation of European electronic systems with a view to achieving their operability, cyber-resilience, interconnectivity, continuous improvement and synchronised implementation, and, as part of that overall coordination, the facilitation of an efficient and swift communication with and between Member States on matters related to those systems;
  - (c) the coordination of European electronic systems at Union level with a view to their promotion and implementation at national level;
  - (d) the coordination of the development and operation of European electronic systems as regards their interactions with third parties, excluding actions designed to meet national requirements;
  - (e) the coordination of European electronic systems with other relevant actions relating to eGovernment at Union level;
  - (f) the timely and transparent communication with the stakeholders that are concerned with the implementation of European electronic systems at Union and Member State level, in particular about delays in the implementation of common and national components.
3. The Member States shall, in particular, ensure the following:
  - (a) the development and operation of national components;
  - (b) the coordination of the development and operation of the national components at national level;
  - (c) the coordination of European electronic systems with other relevant actions relating to eGovernment at national level;
  - (d) the regular provision to the Commission of information on the measures taken to enable the customs authorities or economic operators concerned to make full and effective use of the European electronic systems;
  - (e) the implementation at national level of European electronic systems.
4. The Commission shall publish and regularly update, for information purposes, an indicative list of the European electronic systems financed under the Programme.

## CHAPTER V

**Programming, monitoring, evaluation and control**

## Article 12

**Work programme**

1. The Programme shall be implemented through multiannual work programmes as referred to in Article 110(2) of the Financial Regulation.
2. In order to ensure the implementation of the Programme, and without prejudice to the Financial Regulation, the Commission shall adopt implementing acts to establish multiannual work programmes. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 17(2).
3. The multiannual work programmes shall aim to achieve the objectives set out in Article 3 through the actions in accordance with Article 7. They shall set out, where appropriate, the total amount of the financing plan for all actions and shall set out:
  - (a) for each action:
    - (i) the objectives pursued and the expected results, in accordance with the general and specific objectives set out in Article 3;
    - (ii) a description of the actions to be financed;
    - (iii) where appropriate, an indication of the amount allocated to each action; and
    - (iv) the method of implementation and an indicative implementation timetable;
  - (b) for grants, the maximum rate of co-financing referred to in Article 10(2), and where appropriate, the essential award criteria to be applied.

## Article 13

**Monitoring and reporting**

1. Indicators to report on the progress of the Programme towards the achievement of the general and specific objectives set out in Article 3 are listed in Annex II.
2. To ensure effective assessment of the Programme's progress towards the achievement of its objectives, the Commission is empowered to adopt delegated acts, in accordance with Article 16, to amend Annex II with regard to the indicators where considered necessary, as well as to supplement this Regulation with provisions on the establishment of a monitoring and evaluation framework.
3. The performance reporting system shall ensure that data for monitoring the implementation and the results of the Programme are collected efficiently, effectively and in a timely manner. To that end, proportionate reporting requirements shall be imposed on the recipients of Union funds.

## Article 14

**Evaluation**

1. Evaluations shall be carried out in a timely manner so that they can be used in the decision-making process.
2. An interim evaluation of the Programme shall be carried out by the Commission once there is sufficient information available about its implementation, but no later than four years after the start of that implementation. In its interim evaluation, the Commission shall assess the performance of the Programme, including aspects such as effectiveness, efficiency, coherence, relevance, synergies within the Programme and Union added-value.

3. At the end of the implementation of the Programme, but no later than four years after the end of the period specified in Article 1, a final evaluation of the Programme shall be carried out by the Commission.
4. The Commission shall communicate the conclusions of the evaluations, accompanied by its observations and lessons learned, to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions.

#### Article 15

### Protection of the financial interests of the Union

Where a third country participates in the Programme by means of a decision adopted pursuant to an international agreement or on the basis of any other legal instrument, the third country shall grant the necessary rights and access required for the authorising officer responsible, OLAF and the Court of Auditors to comprehensively exercise their respective competences. In the case of OLAF, such rights shall include the right to carry out investigations, including on-the-spot checks and inspections, as provided for in Regulation (EU, Euratom) No 883/2013.

#### CHAPTER VI

### Exercise of the delegation and committee procedure

#### Article 16

### 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 Article 13(2) shall be conferred on the Commission until 31 December 2027. The Commission shall draw up a report in respect of the delegation of power not later than nine months before that date. The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period.
3. The delegation of power referred to in Article 13(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 of 13 April 2016 on Better Law-Making.
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 Article 13(2) shall enter into force only 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 17***Committee procedure**

1. The Commission shall be assisted by a committee referred to as the Customs Programme Committee. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.
2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

## CHAPTER VII

***Transitional and final provisions****Article 18***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.
2. The Commission shall implement information and communication actions relating to the Programme, to actions taken pursuant to the Programme and to the results obtained.
3. Financial resources allocated to the Programme shall also contribute to the corporate communication of the political priorities of the Union, insofar as those priorities are related to the objectives referred to in Article 3.

*Article 19***Repeal**

Regulation (EU) No 1294/2013 is repealed with effect from 1 January 2021.

*Article 20***Transitional provisions**

1. This Regulation shall not affect the continuation of or modification of actions initiated pursuant to Regulation (EU) No 1294/2013, which shall continue to apply to those actions until their closure.
2. The financial envelope for the Programme may also cover the technical and administrative assistance expenses necessary to ensure the transition between the Programme and the measures adopted pursuant to Regulation (EU) No 1294/2013.
3. If necessary, appropriations may be entered in the Union 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.

*Article 21***Entry into force**

This Regulation shall enter into force on the day 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 all Member States.

Done at Brussels, ...

*For the European Parliament*  
*The President*

*For the Council*  
*The President*

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## ANNEX I

**NON-EXHAUSTIVE LIST OF POSSIBLE FORMS OF ACTIONS AS REFERRED TO IN POINTS (A), (B) AND (D)  
OF THE FIRST SUBPARAGRAPH OF ARTICLE 7(3)**

Actions referred to in points (a), (b) and (d) of the first subparagraph of Article 7(3) may inter alia take the following forms:

**1. Meetings and similar ad-hoc events**

- seminars and workshops, generally attended by participants from all participating countries, at which presentations are made and participants engage in intensive discussions on and activities relating to a particular subject;
- working visits, organised to enable officials to acquire or increase their expertise or knowledge in customs matters;

**2. Project-based structured collaboration**

- project groups, generally composed of a limited number of participating countries, that are operational during a limited period of time for the purpose of pursuing a predefined objective with a precisely defined outcome, including coordination or benchmarking;
- task forces, namely structured forms of cooperation, permanent or non-permanent in nature, that pool expertise to perform tasks in specific domains or to carry out operational activities, possibly with the support of online collaboration services, administrative assistance and infrastructure and equipment facilities;
- monitoring activities, carried out by joint teams made up of Commission officials and officials of the eligible authorities to analyse customs practices, to identify any difficulties in implementing rules and, where appropriate, to make suggestions for the adaptation of Union rules and working methods;

**3. Human competency and other capacity-building actions**

- common training or development of e-learning to support the acquisition of necessary professional skills and knowledge relating to customs;
  - technical support aimed at improving administrative procedures, enhancing administrative capacity and improving the functioning and operations of customs authorities through the development and sharing of best practices.
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## ANNEX II

**INDICATORS AS REFERRED TO IN ARTICLE 13(1)**

To report on the progress of the Programme towards the achievement of the general and specific objectives set out in Article 3, the following indicators shall be used:

**A. Capacity building (administrative, human and IT capacity)**

1. the Union Law and Policy Application and Implementation Index (the number of actions under the Programme organised in connection with the application and implementation of Union law and policy relating to customs and the number of recommendations issued following those actions);
2. the Learning Index (the number of learning modules used, the number of officials trained and the quality score given by participants);
3. the availability of European electronic systems (in terms of percentage of time).
4. the availability of the Common Communications Network (in terms of percentage of time);
5. the use of key European electronic systems aimed at increasing interconnectivity and moving to a paper-free customs union (number of messages exchanged and consultations carried out);
6. the Union Customs Code (UCC) completion rate (percentage of milestones reached in the implementation of the UCC electronic systems);

**B. Knowledge sharing and networking**

1. the Collaboration Robustness Index (the degree of networking generated, the number of face-to-face meetings and the number of on-line collaboration groups);
  2. best Practice and Guideline Index (the number of actions under the Programme organised in connection with the application and implementation of the best practice and guidelines relating to customs and the percentage of participants that made use of guidelines on working practices that have been developed with the support of the Programme).
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