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III

(Preparatory acts)

COUNCIL

POSITION (EU) No 29/2021 OF THE COUNCIL AT FIRST READING

with a view to the adoption of a Regulation of the European Parliament and of the Council establishing, as part of the Integrated Border Management Fund, the Instrument for Financial Support for Border Management and Visa Policy

Adopted by the Council on 14 June 2021

(2021/C 265/01)

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 77(2) and 79(2), point (d) thereof,

Having regard to the proposal from the European Commission,

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

Having regard to the opinion of the European Economic and Social Committee ⁽¹⁾,

After consulting the Committee of the Regions,

Acting in accordance with the ordinary legislative procedure ⁽²⁾,

Whereas:

- (1) The Union's objective of ensuring a high level of security within an area of freedom, security and justice pursuant to Article 67(3) of the Treaty on the Functioning of the European Union (TFEU) should be achieved, inter alia, through common measures on the crossing of internal borders by persons and on border control at external borders and the common visa policy, while preserving the careful balance between free movement of persons on the one hand and security on the other.
- (2) Pursuant to Article 80 TFEU, the Union policies on border checks, asylum and immigration and their implementation are to be governed by the principle of solidarity and fair sharing of responsibility, including its financial implications, between the Member States.
- (3) In the Rome Declaration signed on 25 March 2017, the leaders of 27 Member States affirmed their commitment to working towards a safe and secure Europe and to building a Union where all citizens feel safe and can move freely, where the external borders are secured, with an efficient, responsible and sustainable migration policy, respecting international norms, as well as a Europe determined to fight terrorism and organised crime.
- (4) All actions funded under the Instrument for Financial Support for Border Management and Visa Policy (the 'Instrument'), established by this Regulation, including those carried out in third countries, should be implemented in full compliance with the rights and principles enshrined in the Union *acquis*, and the Charter of Fundamental Rights of the European Union (the 'Charter'), and should be in line with the international obligations of the Union and the Member States arising from the international instruments to which they are party, in particular by ensuring compliance with the principles of non-discrimination and *non-refoulement*.

⁽¹⁾ OJ C 62, 15.2.2019, p. 184.

⁽²⁾ Position of the European Parliament of 13 March 2019 (OJ C 23, 21.1.2021, p. 406) and position of the Council at first reading of 14 June 2021. Position of the European Parliament of ... (not yet published in the Official Journal).

- (5) The policy objective of the Instrument is to develop and implement strong and effective European integrated border management at the external borders, thereby contributing to ensuring a high level of internal security within the Union, while safeguarding the free movement of persons within it and fully respecting the relevant Union *acquis* and the international obligations of the Union and the Member States arising from the international instruments to which they are party.
- (6) European integrated border management, as implemented by the European Border and Coast Guard, established by Regulation (EU) 2019/1896 of the European Parliament and of the Council ⁽³⁾, is a shared responsibility of the European Border and Coast Guard Agency and the national authorities responsible for border management, including coast guards to the extent that they carry out border control tasks. It should contribute to facilitating legitimate border crossings, to preventing and detecting illegal immigration and cross-border crime and to effectively manage migratory flows.
- (7) Facilitating legitimate travel, while preventing irregular migration and security risks, was identified as one of the main objectives of the Union's approach presented in the communication of the Commission of 23 September 2020 on a New Pact on Migration and Asylum.
- (8) Financial support from the Union budget is indispensable for the implementation of European integrated border management to support Member States, acting in full respect of fundamental rights, in managing the crossing of the external borders efficiently and in addressing future challenges at those borders, which would contribute to addressing serious crime with a cross-border dimension.
- (9) Member States should be provided with adequate Union financial support to promote the implementation of European integrated border management and to ensure that European integrated border management becomes an operational reality. European integrated border management consists of, *inter alia*, the following components laid down in Regulation (EU) 2019/1896: border control; search and rescue operations during border surveillance; risk analysis; cooperation between Member States, including support coordinated by the European Border and Coast Guard Agency; inter-agency cooperation, including the regular exchange of information; cooperation with third countries; technical and operational measures within the Schengen area which are related to border control and designed to address illegal immigration and to counter cross-border crime better; use of state-of-the-art technology; a quality control mechanism and solidarity mechanisms.
- (10) The Instrument should be able to provide the necessary support to Member States for the implementation of common minimum standards for external border surveillance, in line with the respective competences of the Member States, the European Border and Coast Guard Agency and the Commission.
- (11) As the customs authorities of the Member States have been taking up an increasing number of responsibilities which often extend to the field of security and which take place at the external borders, it is important to foster inter-agency cooperation as a component of European integrated border management in line with Regulation (EU) 2019/1896. Complementarity in carrying out border control and customs control at the external borders needs to be ensured by providing adequate Union financial support to the Member States. Inter-agency cooperation will not only strengthen customs controls in order to combat all forms of trafficking but will also facilitate legitimate trade and travel and contribute to a secure and efficient customs union.
- (12) It is therefore necessary to establish the successor fund to the 2014-2020 Internal Security Fund, established by Regulations (EU) No 513/2014 ⁽⁴⁾ and (EU) No 515/2014 ⁽⁵⁾ of the European Parliament and of the Council, by setting up, *inter alia*, an Integrated Border Management Fund (the 'Fund').
- (13) Due to the legal particularities of Title V TFEU and the different applicable legal bases regarding the policies on external borders and on customs control, it is not legally possible to establish the Fund as a single instrument.

⁽³⁾ Regulation (EU) 2019/1896 of the European Parliament and of the Council of 13 November 2019 on the European Border and Coast Guard and repealing Regulations (EU) No 1052/2013 and (EU) 2016/1624 (OJ L 295, 14.11.2019, p. 1).

⁽⁴⁾ Regulation (EU) No 513/2014 of the European Parliament and of the Council of 16 April 2014 establishing, as part of the Internal Security Fund, the instrument for financial support for police cooperation, preventing and combating crime, and crisis management and repealing Council Decision 2007/125/JHA (OJ L 150, 20.5.2014, p. 93).

⁽⁵⁾ Regulation (EU) No 515/2014 of the European Parliament and of the Council of 16 April 2014 establishing, as part of the Internal Security Fund, the instrument for financial support for external borders and visa and repealing Decision No 574/2007/EC (OJ L 150, 20.5.2014, p. 143).

- (14) The Fund should therefore be established as a comprehensive framework for Union financial support in the field of border management and visa policy comprising the Instrument as well as the Instrument for Financial Support for Customs Control Equipment, established by Regulation (EU) 2021/... of the European Parliament and of the Council ⁽⁶⁾ (*). That framework should be complemented by Regulation (EU) 2021/... of the European Parliament and of the Council ⁽⁷⁾ (**), to which this Regulation should refer as regards rules on shared management.
- (15) The Instrument should build on the results and investments of its predecessors, the External Borders Fund for the 2007-2013 period, established by Decision No 574/2007/EC of the European Parliament and of the Council ⁽⁸⁾ and the instrument for financial support for external borders and visa as part of the Internal Security Fund for the 2014-2020 period, established by Regulation (EU) No 515/2014, and should be extended to take into account new developments.
- (16) To ensure uniform and high-quality external border control and to facilitate legitimate travel across the external borders, the Instrument should contribute to the development of European integrated border management that includes measures involving policy, law, systematic cooperation, burden sharing, the assessment of the situation and changing circumstances regarding crossing points for irregular migrants, personnel, equipment and technology, which may be taken at different levels by the competent authorities of the Member States and by the European Border and Coast Guard Agency, acting in cooperation with other actors such as other Union bodies, offices and agencies, in particular the European Union Agency for the Operational Management of Large-Scale IT Systems in the Area of Freedom, Security and Justice (eu-LISA), established by Regulation (EU) 2018/1726 of the European Parliament and of the Council ⁽⁹⁾, the European Union Agency for Law Enforcement Cooperation (Europol), established by Regulation (EU) 2016/794 of the European Parliament and of the Council ⁽¹⁰⁾, and, where appropriate, third countries and international organisations.
- (17) The Instrument should contribute to improving the efficiency of visa processing in terms of facilitating visa procedures for *bona fide* travellers and in terms of detecting and assessing security risks and irregular migration risks. In particular, the Instrument should deliver financial assistance to support the digitalisation of visa processing with the objective of providing fast, secure and client-friendly visa procedures for the benefit of both visa applicants and consulates. The Instrument should also serve to ensure wide coverage of consular services across the world. The uniform implementation and the modernisation of the common visa policy, as well as the measures stemming from Regulation (EC) No 767/2008 of the European Parliament and of the Council ⁽¹¹⁾, should also be covered by the Instrument, as should assistance to Member States for the issuance of visas, including visas with limited territorial validity issued on humanitarian grounds, for reasons of national interest or because of international obligations in line with the Union *acquis* in relation to visas.
- (18) The Instrument should support measures linked to external border control in the territory of the countries applying the Schengen *acquis* as part of the implementation of the European integrated border management, which strengthens the overall functioning of the Schengen area.
- (19) With a view to improving the management of the external borders, to facilitating legitimate travel, to contributing to preventing and combating irregular border crossings, to implementing the common visa policy and to contributing to a high level of security within the area of freedom, security and justice of the Union, the Instrument should support the development of large-scale IT systems in accordance with Union law in the area of border management. It should also support the setting-up of interoperability, as established in Regulations

⁽⁶⁾ Regulation (EU) 2021/... of the European Parliament and of the Council of ... establishing, as part of the Integrated Border Management Fund, the instrument for financial support for customs control equipment (OJ L ..., ..., p. ...).

^(*) Regulation contained in document ST 7234/21 (2018/0258 (COD)).

⁽⁷⁾ Regulation (EU) 2021/... of the European Parliament and of the Council of ... laying down common provisions on the European Regional Development Fund, the European Social Fund Plus, the Cohesion Fund, the Just Transition Fund and the European Maritime, Fisheries and Aquaculture Fund and financial rules for those and for the Asylum, Migration and Integration Fund, the Internal Security Fund and the Instrument for Financial Support for Border Management and Visa Policy (OJ ...).

^(**) Regulation contained in document ST 6674/21 (2018/0196 (COD)).

⁽⁸⁾ Decision No 574/2007/EC of the European Parliament and of the Council of 23 May 2007 establishing the External Borders Fund for the period 2007 to 2013 as part of the General programme Solidarity and Management of Migration Flows (OJ L 144, 6.6.2007, p. 22).

⁽⁹⁾ Regulation (EU) 2018/1726 of the European Parliament and of the Council of 14 November 2018 on the European Union Agency for the Operational Management of Large-Scale IT Systems in the Area of Freedom, Security and Justice (eu-LISA), and amending Regulation (EC) No 1987/2006 and Council Decision 2007/533/JHA and repealing Regulation (EU) No 1077/2011 (OJ L 295, 21.11.2018, p. 99).

⁽¹⁰⁾ Regulation (EU) 2016/794 of the European Parliament and of the Council of 11 May 2016 on the European Union Agency for Law Enforcement Cooperation (Europol) and replacing and repealing Council Decisions 2009/371/JHA, 2009/934/JHA, 2009/935/JHA, 2009/936/JHA and 2009/968/JHA (OJ L 135, 24.5.2016, p. 53).

⁽¹¹⁾ Regulation (EC) No 767/2008 of the European Parliament and of the Council of 9 July 2008 concerning the Visa Information System (VIS) and the exchange of data between Member States on short-stay visas (VIS Regulation) (OJ L 218, 13.8.2008, p. 60).

(EU) 2019/817⁽¹²⁾ and (EU) 2019/818⁽¹³⁾ of the European Parliament and of the Council, in the Member States between Union information systems, namely the Entry/Exit System (EES), established by Regulation (EU) 2017/2226 of the European Parliament and of the Council⁽¹⁴⁾, the Visa Information System (VIS), established by Regulation (EC) No 767/2008, the European Travel Information and Authorisation System (ETIAS), established by Regulation (EU) 2018/1240 of the European Parliament and of the Council⁽¹⁵⁾, Eurodac, established by Regulation (EU) No 603/2013 of the European Parliament and of the Council⁽¹⁶⁾, the Schengen Information System (SIS), established by Regulations (EU) 2018/1860⁽¹⁷⁾, (EU) 2018/1861⁽¹⁸⁾ and (EU) 2018/1862 of the European Parliament and of the Council⁽¹⁹⁾ and the centralised system for the identification of Member States holding conviction information on third-country nationals and stateless persons (ECRIS-TCN), established by Regulation (EU) 2019/816 of the European Parliament and of the Council⁽²⁰⁾, in order for those Union information systems and their data to supplement each other. The Instrument should also contribute to the necessary developments at national level following the implementation of the interoperability components at central level, namely the European search portal (ESP), a shared biometric matching service (shared BMS), a common identity repository (CIR) and a multiple-identity detector (MID).

- (20) In order to benefit from the knowledge and expertise of the decentralised agencies with competence in the areas of border management, visa policy and large-scale IT systems, the Commission should, in a timely manner, involve the relevant agencies in the work of the Committee for the Home Affairs Funds set up by this Regulation, especially at the beginning and mid-term of the programming period. Where appropriate, the Commission should also be able to involve the relevant Union bodies, offices and agencies in monitoring and evaluation, in particular with a view to ensuring that the actions supported by the Instrument comply with the relevant Union *acquis* and agreed Union priorities. The Instrument should complement and reinforce the activities implementing European integrated border management in line with the principle of shared responsibility and solidarity between the Member States and the European Border and Coast Guard Agency, which represent the two pillars of the European Border and Coast Guard.

This means, in particular, that, when drawing up their programmes implemented under shared management, Member States should take into account the analytical tools and operational and technical guidelines developed by the European Border and Coast Guard Agency, as well as the training curricula developed by it, such as the

⁽¹²⁾ Regulation (EU) 2019/817 of the European Parliament and of the Council of 20 May 2019 on establishing a framework for interoperability between EU information systems in the field of borders and visa and amending Regulations (EC) No 767/2008, (EU) 2016/399, (EU) 2017/2226, (EU) 2018/1240, (EU) 2018/1726 and (EU) 2018/1861 of the European Parliament and of the Council and Council Decisions 2004/512/EC and 2008/633/JHA (OJ L 135, 22.5.2019, p. 27).

⁽¹³⁾ Regulation (EU) 2019/818 of the European Parliament and of the Council of 20 May 2019 on establishing a framework for interoperability between EU information systems in the field of police and judicial cooperation, asylum and migration and amending Regulations (EU) 2018/1726, (EU) 2018/1862 and (EU) 2019/816 (OJ L 135, 22.5.2019, p. 85).

⁽¹⁴⁾ Regulation (EU) 2017/2226 of the European Parliament and of the Council of 30 November 2017 establishing an Entry/Exit System (EES) to register entry and exit data and refusal of entry data of third-country nationals crossing the external borders of the Member States and determining the conditions for access to the EES for law enforcement purposes, and amending the Convention implementing the Schengen Agreement and Regulations (EC) No 767/2008 and (EU) No 1077/2011 (OJ L 327, 9.12.2017, p. 20).

⁽¹⁵⁾ Regulation (EU) 2018/1240 of the European Parliament and of the Council of 12 September 2018 establishing a European Travel Information and Authorisation System (ETIAS) and amending Regulations (EU) No 1077/2011, (EU) No 515/2014, (EU) 2016/399, (EU) 2016/1624 and (EU) 2017/2226 (OJ L 236, 19.9.2018, p. 1).

⁽¹⁶⁾ Regulation (EU) No 603/2013 of the European Parliament and of the Council of 26 June 2013 on the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of Regulation (EU) No 604/2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person and on requests for the comparison with Eurodac data by Member States' law enforcement authorities and Europol for law enforcement purposes, and amending Regulation (EU) No 1077/2011 establishing a European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice (OJ L 180, 29.6.2013, p. 1).

⁽¹⁷⁾ Regulation (EU) 2018/1860 of the European Parliament and of the Council of 28 November 2018 on the use of the Schengen Information System for the return of illegally staying third-country nationals (OJ L 312, 7.12.2018, p. 1).

⁽¹⁸⁾ Regulation (EU) 2018/1861 of the European Parliament and of the Council of 28 November 2018 on the establishment, operation and use of the Schengen Information System (SIS) in the field of border checks, and amending the Convention implementing the Schengen Agreement, and amending and repealing Regulation (EC) No 1987/2006 (OJ L 312, 7.12.2018, p. 14).

⁽¹⁹⁾ Regulation (EU) 2018/1862 of the European Parliament and of the Council of 28 November 2018 on the establishment, operation and use of the Schengen Information System (SIS) in the field of police cooperation and judicial cooperation in criminal matters, amending and repealing Council Decision 2007/533/JHA, and repealing Regulation (EC) No 1986/2006 of the European Parliament and of the Council and Commission Decision 2010/261/EU (OJ L 312, 7.12.2018, p. 56).

⁽²⁰⁾ Regulation (EU) 2019/816 of the European Parliament and of the Council of 17 April 2019 establishing a centralised system for the identification of Member States holding conviction information on third-country nationals and stateless persons (ECRIS-TCN) to supplement the European Criminal Records Information System and amending Regulation (EU) 2018/1726 (OJ L 135, 22.5.2019, p. 1).

common core curricula for the training of border guards, including the components of those curricula that relate to fundamental rights and access to international protection. In order to develop complementarity between its tasks and the responsibilities of the Member States for the control of the external borders and to ensure consistency and avoid cost inefficiency, the Commission should, in a timely manner, consult the European Border and Coast Guard Agency on the draft programmes submitted by the Member States in as far as they fall within the competencies of that agency, in particular with regard to the activities financed under operating support.

- (21) In so far as the affected Member States so request, the Instrument should support the implementation of the hotspot approach as outlined in the communication of the Commission of 13 May 2015 entitled 'A European Agenda on Migration' and endorsed by the European Council of 25 and 26 June 2015 and further detailed in Regulation (EU) 2019/1896. The hotspot approach provides operational support to Member States facing disproportionate migratory challenges at the external borders. It offers integrated, comprehensive and targeted assistance in a spirit of solidarity and shared responsibility.
- (22) In the spirit of solidarity and shared responsibility for the protection of the external borders, where vulnerabilities or risks are identified, in particular following a Schengen evaluation in accordance with Council Regulation (EU) No 1053/2013 ⁽²¹⁾, the Member State concerned should adequately address the matter by using the resources under its programme to implement recommendations adopted pursuant to that Regulation and in line with vulnerability assessments carried out by the European Border and Coast Guard Agency in accordance with Regulation (EU) 2019/1896.
- (23) The Instrument should provide financial assistance to those Member States that fully apply the provisions of the Schengen *acquis* on external borders and visas and to those Member States which are preparing for full participation in Schengen, and should be used by the Member States in the interests of the common policy of the Union for the management of the external borders.
- (24) While providing support to Member States' investments in border management, the Instrument should not provide funding for new, permanent infrastructure and buildings at the internal borders at which controls have not yet been lifted. However, at those borders, the Instrument should support investments in movable infrastructure for border control and the maintenance, limited upgrading or replacement of existing infrastructure, which are required to continue to comply with Regulation (EU) 2016/399 of the European Parliament and of the Council ⁽²²⁾.
- (25) In accordance with Protocol No 5 to the 2003 Act of Accession on the transit of persons by land between the region of Kaliningrad and other parts of the Russian Federation, the Instrument should bear any additional cost incurred in implementing the specific provisions of the Union *acquis* covering such transit, namely Council Regulations (EC) No 693/2003 ⁽²³⁾ and (EC) No 694/2003 ⁽²⁴⁾. The need for continued financial support for foregone fees, however, should be dependent upon the visa regime of the Union in force with the Russian Federation.
- (26) To contribute to the achievement of the policy objective of the Instrument, Member States should ensure that their programmes include actions addressing all the specific objectives of the Instrument and that the allocation of resources among the specific objectives ensures that those objectives can be met.
- (27) In keeping with the principle of efficiency, synergies and consistency should be sought with other Union Funds, and overlap between actions should be avoided.
- (28) The return of third-country nationals who are the subject of return decisions issued by a Member State is one of the components of European integrated border management provided for in Regulation (EU) 2019/1896. However, due to its nature and objective, measures in the field of return fall outside the scope of support of the Instrument and are covered by Regulation (EU) .../... of the European Parliament and of the Council ⁽²⁵⁾ (*).

⁽²¹⁾ Council Regulation (EU) No 1053/2013 of 7 October 2013 establishing an evaluation and monitoring mechanism to verify the application of the Schengen *acquis* and repealing the Decision of the Executive Committee of 16 September 1998 setting up a Standing Committee on the evaluation and implementation of Schengen (OJ L 295, 6.11.2013, p. 27).

⁽²²⁾ Regulation (EU) 2016/399 of the European Parliament and of the Council of 9 March 2016 on a Union Code on the rules governing the movement of persons across borders (Schengen Borders Code) (OJ L 77, 23.3.2016, p. 1).

⁽²³⁾ Council Regulation (EC) No 693/2003 of 14 April 2003 establishing a specific Facilitated Transit Document (FTD), a Facilitated Rail Transit Document (FRTD) and amending the Common Consular Instructions and the Common Manual (OJ L 99, 17.4.2003, p. 8).

⁽²⁴⁾ Council Regulation (EC) No 694/2003 of 14 April 2003 on uniform formats for Facilitated Transit Documents (FTD) and Facilitated Rail Transit Documents (FRTD) provided for in Regulation (EC) No 693/2003 (OJ L 99, 17.4.2003, p. 15).

⁽²⁵⁾ Regulation (EU) .../... of the European Parliament and of the Council of ... establishing the Asylum, Migration and Integration Fund (OJ L ...).

(*) Regulation contained in document ST 6486/21 (2018/0248 (COD)).

- (29) To acknowledge the important role of the Member States' customs authorities at the external borders and to ensure that they have sufficient means at their disposal to implement the broad scope of their tasks at those borders, the Instrument for Financial Support for Customs Control Equipment should provide those national authorities with the necessary funding to invest in equipment to carry out customs control, as well as with equipment that can serve other purposes in addition to customs control such as border control.
- (30) Most customs control equipment and information and communication technology (ICT) systems might be equally or incidentally fit for controls of compliance with other legal acts of the Union, such as provisions on border management, visas or police cooperation. The Fund has therefore been conceived as two complementary instruments with distinct but complementary scopes for the purchase of equipment. On the one hand, the Instrument will financially support equipment and ICT systems of which the primary purpose is integrated border management and will also allow their use in the complementary area of customs control. On the other hand, the Instrument for Financial Support for Customs Control Equipment will financially support equipment with customs controls as the main purpose and will also allow its use for additional purposes such as border control and security. Such a distribution of roles will foster inter-agency cooperation as a component of European integrated border management, as provided for in Regulation (EU) 2019/1896, thereby enabling customs and border authorities to work together and maximising the impact of the Union budget through co-sharing and interoperability of control equipment.
- (31) Border surveillance at sea is one of the functions performed by coast guards in the Union maritime domain. National authorities carrying out coast guard functions are also responsible for a wide range of tasks, which could include, but are not limited to, maritime safety, security, search and rescue operations, border control, fisheries control, customs control, general law enforcement and environmental protection. The broad scope of coast guard functions brings them under the remit of different Union policies, which should seek synergies to achieve more effective and efficient results.
- (32) When implementing actions funded under the Instrument which are related to maritime border surveillance, Member States should pay special attention to their international obligations regarding search and rescue operations at sea. In that regard, it should be possible to use equipment and systems supported under the Instrument in search and rescue operations in situations which might arise during a border surveillance operation at sea.
- (33) In addition to Union cooperation on coast guard functions among the European Border and Coast Guard Agency, the European Maritime Safety Agency, established by Regulation (EC) No 1406/2002 of the European Parliament and of the Council ⁽²⁶⁾, and the European Fisheries Control Agency, established by Regulation (EU) 2019/473 of the European Parliament and of the Council ⁽²⁷⁾, improved coherence of the activities in the maritime domain should also be achieved at national level. Synergies between the various actors in the maritime environment should be in line with European integrated border management and maritime security strategies.
- (34) In order to strengthen the complementarity and to reinforce the consistency of maritime activities, to avoid duplication of efforts and to alleviate budgetary constraints in an area of costly activities such as the maritime domain, it should also be possible to use, additionally, the Instrument to support maritime operations of a multipurpose character.
- (35) Equipment and ICT systems financed under the Instrument should also be able to be used for achieving the objectives of the Internal Security Fund, established by Regulation (EU) .../... of the European Parliament and of the Council ⁽²⁸⁾ ^(†) and of the Asylum, Migration and Integration Fund, established by Regulation (EU) .../... ^(**). Such equipment and ICT systems should remain available and deployable for effective and secure border control activities and the use of such equipment and ICT systems for the objectives of the Internal Security Fund and the Asylum, Migration and Integration Fund should be limited in time.

⁽²⁶⁾ Regulation (EC) No 1406/2002 of the European Parliament and of the Council of 27 June 2002 establishing a European Maritime Safety Agency (OJ L 208, 5.8.2002, p. 1).

⁽²⁷⁾ Regulation (EU) 2019/473 of the European Parliament and of the Council of 19 March 2019 on the European Fisheries Control Agency (OJ L 83, 25.3.2019, p. 18).

⁽²⁸⁾ Regulation (EU) .../... of the European Parliament and of the Council of ... establishing the Internal Security Fund (OJ ...).

^(†) Regulation contained in document ST 6488/21 (2018/0250 (COD)).

^(**) Regulation contained in document ST 6486/21 (2018/0248 (COD)).

- (36) The Instrument should, in line with its specific objectives, primarily serve internal Union policy. At the same time, the Instrument should be able to, where appropriate, support actions in line with Union priorities in and in relation to third countries. Those actions should be implemented in full synergy and coherence with, and should complement, other actions outside the Union supported through the Union's external financing instruments. In particular, such actions should be implemented in a way that ensures full coherence with external Union policy, respects the principle of policy coherence for development and is consistent with the strategic programming documents for the country or region in question. Such actions should also focus on measures that are not development-oriented, serve the interests of internal Union policy and be consistent with the activities undertaken inside the Union. In its mid-term and retrospective evaluations, the Commission should pay particular attention to the implementation of actions in or in relation to third countries.
- (37) Funding from the Union budget should concentrate on actions for which Union intervention can bring added value as compared to actions by Member States alone. As the Union is in a better position than Member States to provide a framework for expressing Union solidarity in border management and common visa policy and to provide a platform for the development of the common large-scale IT systems underpinning those policies, financial support provided under this Regulation should contribute, in particular, to strengthening national and Union capabilities in those areas.
- (38) When promoting actions supported by the Instrument, the recipients of Union funding should provide information in the language or languages of the target audience. To ensure the visibility of Union funding, recipients of that funding should refer to its origin when communicating on the action. To that end, recipients should ensure that all communications to the media and the public display the Union emblem and explicitly mention the Union's financial support.
- (39) It should be possible for the Commission to use financial resources under the Instrument to promote best practices and the exchange of information as regards the implementation of the Instrument.
- (40) The Commission should publish information on the support provided from the thematic facility under direct or indirect management in a timely manner and should update such information where appropriate. It should be possible to sort the data by specific objective, name of beneficiary, the amount legally committed and the nature and purpose of the measure.
- (41) A Member State may be deemed not to be compliant with the relevant Union *acquis*, including as regards the use of operating support under the Instrument, if it has failed to fulfil its obligations under the Treaties in the areas of border management and visa policy, including as regards fundamental rights obligations, if there is a clear risk of a serious breach by that Member State of Union values when implementing the *acquis* on border management and visa policy or if an evaluation report under the Schengen evaluation and monitoring mechanism laid down in Regulation (EU) No 1053/2013 has identified deficiencies in the relevant area.
- (42) The Instrument should ensure that there is a fair and transparent distribution of resources to meet the objectives laid down in this Regulation. In order to meet transparency requirements, the Commission should publish information on the annual and multiannual work programmes of the thematic facility. In line with Regulation (EU) .../... (*), each Member State should ensure that within six months of the approval of its programme, there is a website in place on which information on its programme is available, covering the programme's objectives, activities, available funding opportunities and achievements.
- (43) This Regulation should establish the initial amounts for Member States' programmes which consist of fixed amounts as set out in Annex I and an amount calculated on the basis of the criteria laid down in that Annex and which reflect the length of, and the impact levels at, land and sea border sections, the workload at airports and consulates and the number of consulates. In view of the special needs of those Member States which have experienced the highest number of asylum applications per capita in 2018 and 2019, it is appropriate to increase the fixed amounts for Cyprus, Malta and Greece.
- (44) The initial amounts for Member States' programmes should form the basis for Member States' long-term investments. To take account of changes in the baseline situation, such as the pressure on the external borders and the workload at the external borders and at consulates, an additional amount should be allocated to the Member States at the mid-term of the programming period and should be based on the statistical data, in accordance with Annex I, taking into account the state of their programme implementation.
- (45) The Commission should carry out a mid-term evaluation of this Regulation. That mid-term evaluation should be used to assess the effectiveness and Union added value of the Instrument and provide a transparent overview of how the Instrument has been implemented.

(*) Regulation contained in document ST 6674/21 (2018/0196 (COD)).

- (46) As challenges in the area of border management and visa policy are constantly evolving, there is a need to adapt the allocation of funding to changes in priorities for visa policy and border management, including changes that result from increased pressure at the border, and a need to steer funding towards the priorities with the highest Union added value. To respond to pressing needs and changes in policy and Union priorities, and to steer funding towards actions with a high level of Union added value, part of the funding should be periodically allocated, via a thematic facility, to specific actions, Union actions and emergency assistance. The thematic facility offers flexibility in the management of the Instrument and could also be implemented through Member States' programmes.
- (47) Member States should be encouraged to use part of their programme allocation to fund the actions listed in Annex IV by benefiting from a greater Union contribution.
- (48) The Instrument should contribute to supporting operating costs that relate to border management, common visa policy and large-scale IT systems in order to enable Member States to maintain capabilities which are crucial for the Union as a whole. Such support should consist of the full reimbursement of specific costs that relate to the objectives of the Instrument and should form an integral part of the Member States' programmes.
- (49) Part of the available resources under the Instrument could be allocated to Member States' programmes for the implementation of specific actions, in addition to the initial allocation. Those specific actions should be identified at Union level and should concern actions with Union added value which require cooperation among Member States or actions necessary to address developments in the Union which require additional funding to be made available to one or more Member States, such as the purchase through the Member States' programmes of technical equipment needed by the European Border and Coast Guard Agency to perform its operational activities, the modernisation of the processing of visa applications, the development of large-scale IT systems and the establishment of interoperability between those systems. The Commission should set out those specific actions in its work programmes.
- (50) To complement the implementation of the policy objective of the Instrument at national level through Member States' programmes, the Instrument should also provide support for actions at Union level. Such actions should serve overall strategic purposes within the scope of intervention of the Instrument in relation to policy analysis and innovation, transnational mutual learning and partnerships and the testing of new initiatives and actions across the Union.
- (51) In order to strengthen the Union's capacity to immediately address urgent and specific needs in the event of an emergency situation, such as a large or disproportionate influx of third-country nationals, in particular at those border sections to which a high or critical impact level has been attributed under Regulation (EU) 2019/1896, or other situations in respect of which it has been duly substantiated that immediate action at the external borders is required, it should be possible to provide emergency assistance, in accordance with the framework set out in this Regulation.
- (52) This Regulation lays down a financial envelope for the entire duration of the Instrument 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 ⁽²⁹⁾, for the European Parliament and the Council during the annual budgetary procedure. The prime reference amount allocated to the Instrument is increased by an additional amount of EUR 1 billion in 2018 prices as specified in Annex II to Council Regulation (EU, Euratom) 2020/2093 ⁽³⁰⁾.
- (53) Regulation (EU, Euratom) No 2018/1046 of the European Parliament and of the Council ⁽³¹⁾ (the 'Financial Regulation') applies to the Instrument. 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.

⁽²⁹⁾ OJ L 433 I, 22.12.2020, p. 28.

⁽³⁰⁾ Council Regulation (EU, Euratom) 2020/2093 of 17 December 2020 laying down the multiannual financial framework for the years 2021 to 2027 (OJ L 433 I, 22.12.2020, p. 11).

⁽³¹⁾ 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).

- (54) For the purpose of implementation of actions under shared management, the Instrument should form part of a coherent framework that consists of this Regulation, the Financial Regulation and Regulation (EU) .../... (*).
- (55) Regulation (EU) .../... (*) establishes the framework for action by the European Regional Development Fund, the European Social Fund Plus, the Cohesion Fund, the European Maritime, Fisheries and Aquaculture Fund, the Just Transition Fund, the Asylum, Migration and Integration Fund, the Internal Security Fund and the Instrument for Financial Support for Border Management and Visa Policy, as a part of the Integrated Border Management Fund, and it lays down, in particular, the rules concerning programming, monitoring and evaluation, management and control for Union funds implemented under shared management. Additionally, it is necessary to specify the objectives of the Instrument with respect to border management and visa policy in this Regulation, and to lay down specific provisions concerning actions that may be financed under the Instrument.
- (56) A pre-financing scheme for the Instrument is set out in Regulation (EU) .../... (*), and a specific pre-financing rate is set in this Regulation. In addition, in order to ensure that it is possible to react promptly to emergency situations, it is appropriate to set a specific pre-financing rate for emergency assistance. The pre-financing scheme should ensure that Member States have the means to provide support to beneficiaries as of the start of the implementation of their programmes.
- (57) The types of financing and methods of implementation under this Regulation should be chosen on the basis of their ability to achieve the specific objectives of the actions and to deliver results, taking into account, in particular, the costs of controls, administrative burdens and the risk of non-compliance. When making that choice, 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, should be considered.
- (58) In accordance with Article 193(2) of the Financial Regulation, a grant may be awarded for an action which has already begun, provided that the applicant can demonstrate the need for starting the action prior to signature of the grant agreement. However, the costs incurred prior to the date of submission of the grant application are not eligible for Union financing except in duly justified exceptional cases. In order to avoid any disruption in Union support which could be prejudicial to the Union's interests, it should be possible, for a limited period of time at the beginning of the 2021-2027 multiannual financial framework, that costs incurred in respect of actions supported under this Regulation under direct management and which have already begun be considered eligible for Union financing as of 1 January 2021, even if those costs were incurred before the grant application or the request for assistance was submitted.
- (59) In order to make the most use of the single audit principle, it is appropriate to set specific rules on the control and audit of projects in which international organisations, the internal control systems of which have been positively assessed by the Commission, are the beneficiaries. For such projects, managing authorities should have the possibility of limiting their management verifications, provided that the beneficiary delivers all necessary data and information on the progress of the project and on the eligibility of underlying expenditure in a timely manner. In addition, where a project implemented by such an international organisation is part of an audit sample, it should be possible for the audit authority to carry out its work in line with the principles of the International Standard on Related Services (ISRS) 4400, 'Engagements to Perform Agreed-upon Procedures Regarding Financial Information'.
- (60) In accordance with the Financial Regulation, Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council⁽³²⁾ and Council Regulations (EC, Euratom) No 2988/95⁽³³⁾, (Euratom, EC) No 2185/96⁽³⁴⁾ and (EU) 2017/1939⁽³⁵⁾, 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 administrative penalties.

(*) Regulation contained in document ST 6674/21 (2018/0196 (COD)).

⁽³²⁾ 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).

⁽³³⁾ Council Regulation (Euratom, EC) No 2988/95 of 18 December 1995 on the protection of the European Communities' financial interests (OJ L 312, 23.12.1995, p. 1).

⁽³⁴⁾ 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).

⁽³⁵⁾ 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).

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⁽³⁶⁾. 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 to ensure that any third parties involved in the implementation of Union funds grant equivalent rights. Member States should cooperate fully and provide all necessary assistance to Union institutions, bodies, offices and agencies in relation to the protection of the financial interests of the Union.

- (61) 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 and 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.
- (62) Pursuant to Council Decision 2013/755/EU⁽³⁷⁾, persons and entities established in overseas countries or territories are eligible for funding subject to the rules and objectives of the Instrument and possible arrangements applicable to the Member State to which the relevant overseas country or territory is linked.
- (63) Pursuant to Article 349 TFEU and in line with the communication of the Commission of 24 October 2017 entitled 'A stronger and renewed strategic partnership with the EU's outermost regions', endorsed by the Council in its conclusions of 12 April 2018, the relevant Member States should ensure that their programmes address the emerging threats with which the outermost regions are confronted. The Instrument should support those Member States with adequate resources to help the outermost regions as appropriate.
- (64) Pursuant to paragraph 22 and 23 of the Inter-institutional Agreement of 13 April 2016 on Better Law-Making⁽³⁸⁾, the Instrument 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 the effects of the Instrument on the ground. In order to measure the achievements of the Instrument, indicators and related targets should be established in relation to each specific objective of the Instrument. Those indicators should include qualitative and quantitative indicators.
- (65) Reflecting the importance of tackling climate change in accordance with the Union's commitments to implement the Paris Agreement adopted under the United Nations Framework Convention on Climate Change⁽³⁹⁾, and the commitment to the United Nations' Sustainable Development Goals, the actions under this Regulation should contribute to the achievement of an overall target of 30 % of all multiannual financial framework expenditure being spent on mainstreaming climate objectives and to working towards the ambition of 7,5 % of the budget being spent on biodiversity expenditure in 2024 and 10 % in 2026 and 2027 while taking into account the existing overlaps between climate and biodiversity goals. The Instrument should support activities that respect the climate and environmental standards and priorities of the Union and would do no significant harm to environmental objectives within the meaning of Article 17 of Regulation (EU) 2020/852 of the European Parliament and of the Council⁽⁴⁰⁾.
- (66) Regulation (EU) No 514/2014 of the European Parliament and of the Council⁽⁴¹⁾ and any act applicable to the 2014–2020 programming period should continue to apply to programmes and projects supported under the Instrument during the 2014–2020 programming period. Since the implementation period of Regulation (EU) No 514/2014 overlaps with the programming period covered by this Regulation, and in order to ensure

⁽³⁶⁾ 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).

⁽³⁷⁾ Council Decision 2013/755/EU of 25 November 2013 on the association of the overseas countries and territories with the European Union (Overseas Association Decision) (OJ L 344, 19.12.2013, p. 1).

⁽³⁸⁾ OJ L 123, 12.5.2016, p. 1.

⁽³⁹⁾ OJ L 282, 19.10.2016, p. 4.

⁽⁴⁰⁾ Regulation (EU) 2020/852 of the European Parliament and of the Council of 18 June 2020 on the establishment of a framework to facilitate sustainable investment, and amending Regulation (EU) 2019/2088 (OJ L 198, 22.6.2020, p. 13).

⁽⁴¹⁾ Regulation (EU) No 514/2014 of the European Parliament and of the Council of 16 April 2014 laying down general provisions on the Asylum, Migration and Integration Fund and on the instrument for financial support for police cooperation, preventing and combating crime, and crisis management (OJ L 150, 20.5.2014, p. 112).

continuity in the implementation of certain projects approved by that Regulation, provisions on the phasing of projects should be laid down. Each individual phase of the project should be implemented in accordance with the rules of the programming period under which it receives funding.

- (67) Through indicators and financial reporting, the Commission and the Member States should monitor the implementation of the Instrument in accordance with the relevant provisions of Regulation (EU) .../... (*) and this Regulation. Starting from 2023, Member States should submit to the Commission annual performance reports covering the latest accounting year. Those reports should contain information on the progress made in the implementation of Member States' programmes. The Member States should also submit summaries of those reports to the Commission. The Commission should translate those summaries into all official languages of the Union and make them publicly available on its website, together with links to the Member States' websites referred to in Regulation (EU) .../... (*).
- (68) In order to supplement and amend non-essential elements of this Regulation, the power to adopt acts in accordance with Article 290 TFEU should be delegated to the Commission in respect of the list of actions in Annex III, the list of actions eligible for higher co-financing rates in Annex IV, operating support under Annex VII and the further development of the 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.
- (69) 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⁽⁴²⁾. The examination procedure should be used for the adoption of implementing acts that lay down common obligations on Member States, in particular obligations concerning the provision of information to the Commission, and the advisory procedure should be used for the adoption of implementing acts relating to the detailed arrangements for the provision of information to the Commission in the framework of programming and reporting, given their purely technical nature. The Commission should adopt immediately applicable implementing acts relating to the adoption of decisions to award emergency assistance provided for by this Regulation where, in duly justified cases relating to the nature and purpose of such assistance, imperative grounds of urgency so require.
- (70) The participation by a Member State in the Instrument should not coincide with its participation in a temporary financial instrument of the Union which supports the beneficiary Member States to finance, inter alia, actions at new external borders of the Union for the implementation of the Schengen *acquis* on borders and visas and external border control.
- (71) Since the objectives of this Regulation cannot be sufficiently achieved by the Member States but can rather 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 (TEU). 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 those objectives.
- (72) As regards Iceland and Norway, this Regulation constitutes a development of the provisions of the Schengen *acquis* within the meaning of the Agreement concluded by the Council of the European Union and the Republic of Iceland and the Kingdom of Norway concerning the latter's' association with the implementation, application and development of the Schengen *acquis*⁽⁴³⁾ which fall within the area referred to in Article 1, Points A and B of Council Decision 1999/437/EC⁽⁴⁴⁾.

(*) Regulation contained in document ST 6674/21 (2018/0196 (COD)).

(42) 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).

(43) OJ L 176, 10.7.1999, p. 36.

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

- (73) As regards Switzerland, this Regulation constitutes a development of provisions of the Schengen *acquis* within the meaning of the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis* ⁽⁴⁵⁾ which fall within the area referred to in Article 1, Points A and B of Decision 1999/437/EC read in conjunction with Article 3 of Council Decision 2008/146/EC ⁽⁴⁶⁾.
- (74) As regards Liechtenstein, this Regulation constitutes a development of the provisions of the Schengen *acquis* within the meaning of the Protocol between the European Union, the European Community, the Swiss Confederation and the Principality of Liechtenstein on the accession of the Principality of Liechtenstein to the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis* ⁽⁴⁷⁾ which fall within the area referred to in Article 1, Points A and B of Decision 1999/437/EC read in conjunction with Article 3 of Council Decision 2011/350/EU ⁽⁴⁸⁾.
- (75) In order to specify the nature and modes of participation in the Instrument of countries associated with the implementation, application and development of the Schengen *acquis*, further arrangements should be concluded between the Union and those countries under the relevant provisions of their respective association agreements. Such arrangements should constitute international agreements within the meaning of Article 218 TFEU. With a view to minimising any possible gap between the moment when the Instrument becomes binding on the country concerned and the entry into force of the arrangements, it is appropriate to start the negotiations on such arrangements as soon as possible after the respective country has notified to the Council and the Commission its decision to accept the contents of the Instrument and to implement it in its internal legal order. The conclusion of such arrangements should take place after the country concerned has informed in writing of the fulfilment of all its internal requirements.
- (76) In accordance with Articles 1 and 2 of Protocol No 22 on the position of Denmark, annexed to the TEU and the TFEU, Denmark is not taking part in the adoption of this Regulation and is not bound by it or subject to its application. Given that this Regulation builds upon the Schengen *acquis*, Denmark should, in accordance with Article 4 of that Protocol, decide within a period of six months after the Council has decided on this Regulation whether it will implement this Regulation in its national law.
- (77) This Regulation constitutes a development of the provisions of the Schengen *acquis* in which Ireland does not take part, in accordance with Council Decision 2002/192/EC ⁽⁴⁹⁾. Ireland is therefore not taking part in the adoption of this Regulation and is not bound by it or subject to its application.
- (78) It is appropriate to align the period of application of this Regulation with that of Regulation (EU, Euratom) 2020/2093.
- (79) In order to ensure continuity in providing support in the relevant policy area and to allow implementation to start from the beginning of the 2021-2027 multiannual financial framework, this Regulation should enter into force as a matter of urgency and should apply, with retroactive effect, from 1 January 2021,

HAVE ADOPTED THIS REGULATION:

CHAPTER I

GENERAL PROVISIONS

Article 1

Subject matter

This Regulation establishes the Instrument for Financial Support for Border Management and Visa Policy (the 'Instrument'), as part of the Integrated Border Management Fund (the 'Fund'), for the period from 1 January 2021 to 31 December 2027.

This Regulation establishes the Fund jointly with Regulation (EU) .../... (*) for the period from 1 January 2021 to 31 December 2027.

⁽⁴⁵⁾ OJ L 53, 27.2.2008, p. 52.

⁽⁴⁶⁾ Council Decision 2008/146/EC of 28 January 2008 on the conclusion, on behalf of the European Community, of the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis* (OJ L 53, 27.2.2008, p. 1).

⁽⁴⁷⁾ OJ L 160, 18.6.2011, p. 21.

⁽⁴⁸⁾ Council Decision 2011/350/EU of 7 March 2011 on the conclusion, on behalf of the European Union, of the Protocol between the European Union, the European Community, the Swiss Confederation and the Principality of Liechtenstein on the accession of the Principality of Liechtenstein to the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis*, relating to the abolition of checks at internal borders and movement of persons (OJ L 160, 18.6.2011, p. 19).

⁽⁴⁹⁾ Council Decision 2002/192/EC of 28 February 2002 concerning Ireland's request to take part in some of the provisions of the Schengen *acquis* (OJ L 64, 7.3.2002, p. 20).

(*) Regulation contained in document ST 7234/21 (2018/0258 (COD))

This Regulation lays down the policy objective of the Instrument, the specific objectives of the Instrument and measures to implement those specific objectives, the budget for the period from 1 January 2021 to 31 December 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) 'border crossing point' means border crossing point as defined in point 8 of Article 2 of Regulation (EU) 2016/399;
- (2) 'European integrated border management' means European integrated border management as referred to in Article 3 of Regulation (EU) 2019/1896;
- (3) 'external borders' means external borders as defined in point 2 of Article 2 of Regulation (EU) 2016/399 and internal borders at which controls have not yet been lifted;
- (4) 'external border section' means external border section as defined in point (11) of Article 2 of Regulation (EU) 2019/1896;
- (5) 'hotspot area' means hotspot area as defined in point (23) of Article 2 of Regulation (EU) 2019/1896;
- (6) 'internal borders at which controls have not yet been lifted' means:
 - (a) the common border between a Member State fully implementing the Schengen *acquis* and a Member State bound to apply the Schengen *acquis* in full, in conformity with its Act of Accession, but for which the relevant Council Decision authorising it to fully apply that *acquis* has not yet entered into force;
 - (b) the common border between two Member States bound to apply the Schengen *acquis* in full, in conformity with their respective Acts of Accession, but for which the relevant Council Decision authorising them to fully apply that *acquis* has not yet entered into force;
- (7) 'emergency situation' means a situation resulting from urgent and exceptional pressure, in which a large or disproportionate number of third-country nationals have crossed, are crossing or are expected to cross the external borders of one or more Member States or in which incidents related to illegal immigration or cross-border crime occur at the external borders of one or more Member States, and those incidents have a decisive impact on border security to such an extent that they risk jeopardising the functioning of the Schengen area, or any other situation in respect of which it has been duly substantiated that immediate action at the external borders within the objectives of the Instrument is required;
- (8) 'specific actions' means transnational or national projects that bring Union added value in accordance with the objectives of the Instrument for which one, several or all Member States may receive an additional allocation to their programmes;
- (9) 'operating support' means a part of a Member State's allocation which may be used as support to the public authorities responsible for carrying out the tasks and providing the services which constitute a public service for the Union;
- (10) 'Union actions' means transnational projects or projects of particular interest to the Union implemented in accordance with the objectives of the Instrument.

Article 3

Objectives of the Instrument

1. As part of the Fund, the policy objective of the Instrument is to ensure strong and effective European integrated border management at the external borders, thereby contributing to ensuring a high level of internal security within the Union, while safeguarding the free movement of persons within it and fully respecting the relevant Union *acquis* and the international obligations of the Union and the Member States arising from the international instruments to which they are party.
2. Within the policy objective set out in paragraph 1, the Instrument shall contribute to the following specific objectives:
 - (a) supporting effective European integrated border management at the external borders, implemented by the European Border and Coast Guard as a shared responsibility of the European Border and Coast Guard Agency and the national authorities responsible for border management, to facilitate legitimate border crossings, to prevent and detect illegal immigration and cross-border crime and to effectively manage migratory flows;

(b) supporting the common visa policy to ensure a harmonised approach with regard to the issuance of visas and to facilitate legitimate travel, while helping to prevent migratory and security risks.

3. Within the specific objectives set out in paragraph 2, the Instrument shall be implemented through the implementation measures listed in Annex II.

Article 4

Non-discrimination and respect for fundamental rights

Actions funded under the Instrument shall be implemented in full compliance with the rights and principles enshrined in the Union *acquis* and the Charter and with the Union's international obligations as regards fundamental rights, in particular by ensuring compliance with the principles of non-discrimination and *non-refoulement*.

Article 5

Scope of support

1. Within its objectives and in accordance with the implementation measures listed in Annex II, the Instrument shall, in particular, support the actions listed in Annex III.

To address unforeseen or new circumstances, the Commission is empowered to adopt delegated acts in accordance with Article 31 to amend the list of actions in Annex III in order to add new actions.

2. To achieve its objectives, the Instrument may support, in line with Union priorities, actions as referred to in Annex III in and in relation to third countries, where appropriate, in accordance with Article 20.

3. As regards actions in and in relation to third countries, the Commission and the Member States, together with the European External Action Service, shall, in accordance with their respective responsibilities, ensure coordination with relevant Union policies, strategies and instruments. They shall, in particular, ensure that actions in and in relation to third countries:

- (a) are carried out in synergy and in coherence with other actions outside the Union supported through other Union instruments;
- (b) are coherent with external Union policy, respect the principle of policy coherence for development and are consistent with the strategic programming documents for the region or country in question;
- (c) focus on measures that are not development-oriented; and
- (d) serve the interests of internal Union policies and are consistent with activities undertaken within the Union.

4. The following actions shall not be eligible:

- (a) actions as referred to in point (a) of paragraph 1 of Annex III at those internal borders at which controls have not yet been lifted;
- (b) actions related to the temporary reintroduction of border control at internal borders within the meaning of point 1 of Article 2 of Regulation (EU) 2016/399;
- (c) actions of which the primary purpose is customs control.

By way of derogation from the first subparagraph, where an emergency situation occurs, actions as referred to in the first subparagraph may be considered eligible.

CHAPTER II

FINANCIAL AND IMPLEMENTATION FRAMEWORK

SECTION 1

Common provisions

Article 6

General principles

1. Support provided under the Instrument shall complement national, regional and local interventions, and shall focus on bringing Union added value to the achievement of the objectives of the Instrument.

2. The Commission and the Member States shall ensure that the support provided under the Instrument and by the Member States is consistent with the relevant actions, policies and priorities of the Union, and is complementary to support provided under other Union instruments.

3. The Instrument shall be implemented under direct, shared or indirect management in accordance with points (a), (b) and (c) of the first subparagraph of Article 62(1) of the Financial Regulation.

Article 7

Budget

1. The financial envelope for the implementation of the Instrument for the period from 1 January 2021 to 31 December 2027 shall be EUR 5 241 000 000 in current prices.
2. As a result of the programme-specific adjustment provided for in Article 5 of Regulation (EU, Euratom) 2020/2093, the amount referred to in paragraph 1 of this Article shall be increased by an additional allocation of EUR 1 000 000 000 in constant 2018 prices as specified in Annex II to that Regulation.
3. The financial envelope shall be used as follows:
 - (a) EUR 3 668 000 000 shall be allocated to the Member States' programmes, of which EUR 200 568 000 shall be allocated to the Special Transit Scheme referred to in Article 17;
 - (b) EUR 1 573 000 000 shall be allocated to the thematic facility referred to in Article 8.
4. The additional allocation referred to in paragraph 2 shall be allocated to the thematic facility referred to in Article 8.
5. At the initiative of the Commission, up to 0,52 % of the financial envelope shall be allocated to technical assistance, as referred to in Article 35 of Regulation (EU) 2021/... (*), for the implementation of the Instrument.
6. In accordance with the relevant provisions of their respective association agreements, arrangements shall be made in order to specify the nature and modes of the participation in the Instrument of countries associated with the implementation, application and development of the Schengen *acquis*. As soon as possible after the country concerned has notified its decision to accept the content of the Instrument and to implement it in its internal legal order, in accordance with the relevant association agreement, the Commission shall submit a recommendation to the Council for the opening of negotiations on those arrangements under Article 218(3) TFEU. On receipt of the recommendation, the Council shall act without delay in deciding to authorise the opening of those negotiations. The financial contributions from those countries shall be added to the overall resources available from the financial envelope referred to in paragraph 1.
7. In accordance with Article 26 of Regulation (EU) .../... (*), up to 5 % of the initial allocation to a Member State from any of the funds under that Regulation under shared management may be transferred to the Instrument under direct or indirect management at the request of that Member State. The Commission shall implement those resources directly in accordance with point (a) of the first subparagraph of Article 62(1) of the Financial Regulation or indirectly in accordance with point (c) of that subparagraph. Those resources shall be used for the benefit of the Member State concerned.

Article 8

General provisions on the implementation of the thematic facility

1. The amount referred to in point (b) of Article 7(3) shall be allocated flexibly through a thematic facility using shared, direct or indirect management as set out in work programmes. Given the internal nature of the Instrument, the thematic facility shall primarily serve internal Union policy in accordance with the specific objectives set out in Article 3 (2).

Funding from the thematic facility shall be used for its components, which are as follows:

- (a) specific actions;
- (b) Union actions; and
- (c) emergency assistance as referred to in Article 25.

Technical assistance at the initiative of the Commission, as referred to in Article 35 of Regulation (EU) 2021/... (*), shall also receive support from the amount referred to in point (b) of Article 7(3) of this Regulation.

2. Funding from the thematic facility shall address priorities with a high Union added value or be used to respond to urgent needs, in line with agreed Union priorities as reflected in Annex II, including the need to protect the external borders and to prevent and detect cross-border crime at the external borders, in particular migrant smuggling and trafficking in human beings, and irregular immigration, as well as to effectively manage migratory flows and support the common visa policy.

The funding referred to in the first subparagraph of this paragraph, with the exception of funding used for emergency assistance in accordance with Article 25, shall only support the actions listed in Annex III.

(*) Regulation contained in document ST 6674/21 (2018/0196 (COD)).

3. The Commission shall engage with civil society organisations and relevant networks, in particular with a view to preparing and evaluating the work programmes for Union actions financed under the Instrument.
4. When funding from the thematic facility is provided under direct or indirect management to Member States, the Commission shall ensure that projects affected by a reasoned opinion delivered by the Commission in respect of infringement proceedings under Article 258 TFEU that put in doubt the legality and regularity of expenditure or the performance of projects are not selected.
5. For the purposes of Article 23 and Article 24(2) of Regulation (EU) .../... (*), where funding from the thematic facility is implemented under shared management, the Member State concerned shall ensure that, and the Commission shall assess whether, the envisaged actions are not affected by a reasoned opinion delivered by the Commission in respect of infringement proceedings under Article 258 TFEU that put in doubt the legality and regularity of expenditure or the performance of the actions.
6. The Commission shall establish the overall amount to be made available for the thematic facility under the annual appropriations of the Union budget.
7. The Commission shall, by means of implementing acts, adopt financing decisions as referred to in Article 110 of the Financial Regulation for the thematic facility identifying objectives and actions to be supported and specifying the amounts for each of the components referred to in the second subparagraph of paragraph 1 of this Article. Financing decisions may be annual or multiannual and may cover one or more components of the thematic facility referred to in the second subparagraph of paragraph 1 of this Article. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 32(3) of this Regulation.
8. The Commission shall ensure that the distribution of resources among the specific objectives set out in Article 3(2) is fair and transparent. The Commission shall report on the use and the distribution of the thematic facility between the components referred to in the second subparagraph of paragraph 1 of this Article, including on the support provided to actions in or in relation to third countries under the Union actions.
9. Following the adoption of a financing decision as referred to in paragraph 7, the Commission may amend the Member States' programmes accordingly.

SECTION 2

Support and implementation under shared management

Article 9

Scope

1. This section applies to the amount referred to in point (a) of Article 7(3) and the additional resources to be implemented under shared management in accordance with the financing decision for the thematic facility referred to in Article 8.
2. Support under this section shall be implemented under shared management in accordance with Article 63 of the Financial Regulation and Regulation (EU) .../... (*).

Article 10

Budgetary resources

1. The amount referred to in point (a) of Article 7(3) shall be allocated to Member States' programmes indicatively as follows:
 - (a) EUR 3 057 000 000 in accordance with Annex I;
 - (b) EUR 611 000 000 for the adjustment of the allocations to the Member States' programmes referred to in Article 14(1).
2. Where the amount referred to in point (b) of paragraph 1 of this Article is not fully allocated, the remaining amount may be added to the amount referred to in point (b) of Article 7(3).

Article 11

Pre-financing

1. In accordance with Article 90(4) of Regulation EU.../... (*), the pre-financing for the Instrument shall be paid in yearly instalments before 1 July of each year, subject to the availability of funds, as follows:
 - (a) 2021: 4 %;

(*) Regulation contained in document ST 6674/21 (2018/0196 (COD)).

- (b) 2022: 3 %;
- (c) 2023: 5 %;
- (d) 2024: 5 %;
- (e) 2025: 5 %;
- (f) 2026: 5 %.

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

Article 12

Co-financing rates

1. The contribution from the Union budget shall not exceed 75 % of the total eligible expenditure for a project.
2. The contribution from the Union budget may be increased to 90 % of the total eligible expenditure for projects implemented under specific actions.
3. The contribution from the Union budget may be increased to 90 % of the total eligible expenditure for the actions listed in Annex IV.
4. The contribution from the Union budget may be increased to 100 % of the total eligible expenditure for operating support, including the Special Transit Scheme referred to in Article 17.
5. The contribution from the Union budget may be increased to 100 % of the total eligible expenditure in accordance with Article 85(2) or (3) of Regulation (EU) 2018/1240.
6. The contribution from the Union budget may be increased to 100 % of the total eligible expenditure for emergency assistance as referred to in Article 25.
7. The contribution from the Union budget may be increased to 100 % of the total eligible expenditure for technical assistance at the initiative of Member States, within the limits set out in point (b)(vi) of Article 36(5) of Regulation (EU) .../... (*).
8. The Commission decision approving a Member State's programme shall set the co-financing rate and the maximum amount of support from the Instrument for the types of action covered by the contribution referred to in paragraphs 1 to 7.
9. The Commission decision approving a Member State's programme shall set out for each type of action whether the co-financing rate is applied in respect of:
 - (a) the total contribution, including the public and private contribution; or
 - (b) the public contribution only.

Article 13

Member States' programmes

1. Each Member State shall ensure that the priorities addressed in its programme are consistent with and respond to Union priorities and challenges in the area of border management and visa policy and are fully in accordance with the relevant Union *acquis* and the international obligations of the Union and Member States arising from the international instruments to which they are party. In defining the priorities of their programmes, Member States shall ensure that the implementation measures listed in in Annex II are adequately addressed in their programmes.

Given the internal nature of the Instrument, Member States' programmes shall primarily serve internal Union policy in accordance with the specific objectives set out in Article 3(2) of this Regulation.

The Commission shall assess the Member States' programmes in accordance with Article 23 of Regulation (EU) .../... (*).

2. Within the resources allocated in Article 10(1), and without prejudice to paragraph 3 of this Article, each Member State shall allocate, within its programme, a minimum of 10 % to the specific objective set out in point (b) of Article 3(2).
3. A Member State may allocate less than the minimum percentage referred to in paragraph 2 only if it provides a detailed explanation in its programme as to why allocating resources below that level would not jeopardise the achievement of the relevant objective.

(*) Regulation contained in document ST 6674/21 (2018/0196 (COD)).

4. The Commission shall ensure that the knowledge and expertise of the relevant decentralised agencies, in particular the European Border and Coast Guard Agency, eu-LISA and the European Union Agency for Fundamental Rights, established by Council Regulation (EC) No 168/2007⁽⁵⁰⁾, are taken into account as regards the areas of their competence, at an early stage and in a timely manner, in the development of the Member States' programmes.
5. The Commission shall consult the European Border and Coast Guard Agency on the actions included under operating support to ensure the consistency and complementarity of the actions of the European Border and Coast Guard Agency and those of the Member States regarding border management, to avoid double financing and to achieve cost efficiency. The Commission shall, where necessary, consult eu-LISA on the actions included under operating support for which eu-LISA has particular expertise in accordance with its mandate.
6. The Commission may involve, where appropriate, relevant decentralised agencies, including those referred to in paragraph 4, in the monitoring and evaluation tasks specified in Section 5, in particular with a view to ensuring that the actions implemented with the support of the Instrument are compliant with the relevant Union *acquis* and agreed Union priorities.
7. Following the adoption of recommendations within the scope of this Regulation in accordance with Regulation (EU) No 1053/2013 and the issuing of recommendations in the framework of carrying out vulnerability assessments in accordance with Regulation (EU) 2019/1896, the Member State concerned shall examine, together with the Commission, the most appropriate approach to addressing those recommendations with the support of the Instrument.
8. The Commission shall, where relevant, involve the European Border and Coast Guard Agency in the process of examining the most appropriate approach to addressing the recommendations referred to in paragraph 7 with the support of the Instrument. In that context, the Commission may, where relevant, draw on the expertise of other Union bodies, offices and agencies with respect to specific issues falling within their areas of competence.
9. When implementing paragraph 7, the Member State concerned shall make the implementation of measures to address any identified deficiencies, especially measures to address serious deficiencies and assessments of non-compliance, a priority for its programme.
10. Where necessary, the programme of the Member State in question shall be amended in accordance with Article 24 of Regulation (EU) 2021/...^(*) to take into account the recommendations referred to in paragraph 7 of this Article.
11. In cooperation and consultation with the Commission and the European Border and Coast Guard Agency in accordance with the that Agency's areas of competence, the Member State concerned may reallocate resources under its programme, including those programmed for operating support, with the aim of addressing the recommendations referred to in paragraph 7 where those recommendations have financial implications.
12. Whenever a Member State decides to implement a project with or in a third country with the support of the Instrument, the Member State concerned shall consult the Commission prior to the approval of the project.
13. Whenever a Member State decides to implement an action with, in or in relation to a third country with the support of the Instrument in relation to the monitoring, detection, identification, tracking, prevention and interception of unauthorised border crossings for the purpose of detecting, preventing and combating irregular immigration and cross-border crime or for the purpose of contributing to the protection of migrants and contributing to saving the lives of migrants, that Member State shall ensure that it has notified the Commission of any bilateral or multilateral cooperation agreement with that third country in accordance with Article 76(3) of Regulation (EU) 2019/1896.
14. As regards equipment, including means of transport, and ICT systems required for effective and secure border control, including for search and rescue operations, and purchased with the support of the Instrument:
 - (a) the Member States shall ensure that the standards established in accordance with Articles 16 and 64 of Regulation (EU) 2019/1896 are met when launching the purchase procedures for the equipment and ICT systems to be developed with the support of the Instrument;
 - (b) all large-scale operating equipment for border management, such as aerial and maritime means of transport and surveillance, purchased by the Member States shall be registered in the technical equipment pool of the European Border and Coast Guard Agency for the purpose of making that equipment available in accordance with Article 64 (9) of Regulation (EU) 2019/1896;
 - (c) they may be additionally used in the following complementary areas: customs control, maritime operations of a multipurpose character and for achieving the objectives of the Internal Security Fund and of the Asylum, Migration and Integration Fund;

⁽⁵⁰⁾ Council Regulation (EC) No 168/2007 of 15 February 2007 establishing a European Union Agency for Fundamental Rights (OJ L 53, 22.2.2007, p. 1).

^(*) Regulation contained in document ST 6674/21 (2018/0196(COD)).

- (d) Member States shall, in order to support coherent planning for capability development for the European Border and Coast Guard and the possible use of joint procurement, communicate to the Commission, as part of the reporting requirement under Article 29, the available multiannual planning for the equipment expected to be purchased under the Instrument, and the Commission shall transmit that information to the European Border and Coast Guard Agency.

Equipment and ICT systems as referred to in the first subparagraph shall only be eligible for financial support from the Instrument where the requirement set out in point (a) of the first subparagraph is met.

For the purposes of point (c) of the first subparagraph, equipment and ICT systems shall remain available and deployable for effective and secure border control activities. The use of equipment in the complementary areas referred to in point (c) of the first subparagraph shall not exceed 30 % of the total period of use of that equipment. ICT systems developed for the purposes of point (c) of the first subparagraph shall provide data and services to the border management systems at national or Union level. Member States shall inform the Commission in the annual performance report of multiple use as referred to in point (c) of the first subparagraph and the place of deployment for multi-purpose equipment and ICT systems.

15. Where Member States are implementing actions under the Instrument, they shall pay particular attention to their international obligations regarding search and rescue operations at sea. Equipment and ICT systems as referred to in points (a) to (d) of the first subparagraph of paragraph 14 may be used for search and rescue operations in situations which might arise during border surveillance operations at sea.

16. Training in the field of border management carried out with the support of the Instrument shall be based on the relevant harmonised and quality-assured European educational and common training standards for border and coast guards, in particular the common core curricula referred to in Article 62(6) of Regulation (EU) 2019/1896.

17. Member States shall in particular pursue the actions listed in Annex IV in their programmes. To address unforeseen or new circumstances and to ensure the effective implementation of funding, the Commission is empowered to adopt delegated acts in accordance with Article 31 to amend the list of actions eligible for higher co-financing rates in Annex IV.

18. Programming as referred to in Article 22(5) of Regulation (EU) .../... (*) shall be based on the types of intervention set out in Table 1 of Annex VI to this Regulation and shall include an indicative breakdown of the programmed resources by type of intervention within each specific objective set out in Article 3(2) of this Regulation.

Article 14

Mid-term review

1. In 2024, the Commission shall allocate to the programmes of the Member States concerned the additional amount referred to in point (b) of Article 10(1) in accordance with the criteria referred to in point (c) of paragraph 1 and paragraphs 2 to 10 of Annex I. The allocation shall be based on the most recent available statistical data for the criteria referred to in point (c) of paragraph 1 and paragraphs 2 to 10 of Annex I. Funding shall be effective as of 1 January 2025.

2. Where at least 10 % of the initial allocation to a programme referred to in point (a) of Article 10(1) of this Regulation has not been covered by payment applications submitted in accordance with Article 91 of Regulation (EU) .../... (*), the Member State concerned shall not be eligible to receive the additional allocation for its programme referred to in point (b) of Article 10(1) of this Regulation.

3. When allocating the funds from the thematic facility referred to in Article 8 of this Regulation as of 1 January 2025, the Commission shall take into account the progress made by the Member States in achieving the milestones of the performance framework referred to in Article 16 of Regulation (EU) .../... (*) and identified shortcomings in implementation.

Article 15

Specific actions

1. A Member State may receive funding for specific actions in addition to its allocation under Article 10(1), provided that that funding is subsequently earmarked as such in its programme and is used to contribute to the implementation of the objectives of the Instrument.

2. Funding for specific actions shall not be used for other actions in the Member State's programme, except in duly justified circumstances and as approved by the Commission through the amendment of the Member State's programme.

(*) Regulation contained in document ST 6674/21 (2018/0196 (COD)).

Article 16

Operating support

1. A Member State may use up to 33 % of the amount allocated to its programme under the Instrument to finance operating support for the public authorities responsible for carrying out the tasks and providing the services which constitute a public service for the Union.
2. When using operating support, a Member State shall comply with the relevant Union *acquis*.
3. A Member State shall explain, in its programme and in the annual performance reports referred to in Article 29, how the use of operating support will contribute to the achievement of the objectives of the Instrument. Before the approval of the Member State's programme, the Commission shall assess the baseline situation in the Member States which have indicated their intention to use operating support, following a consultation of the European Border and Coast Guard Agency and, where appropriate, eu-LISA within the scope of those agencies' areas of competence in accordance with Article 13(4), and taking into account the information provided by those Member States and, where relevant, the information available as a result of Schengen evaluations and vulnerability assessments, including recommendations following Schengen evaluations and vulnerability assessments.
4. Without prejudice to point (c) of Article 5(4), operating support shall be concentrated on actions covered by expenditure as laid down in Annex VII.
5. To address unforeseen or new circumstances or to ensure the effective implementation of funding, the Commission is empowered to adopt delegated acts in accordance with Article 31 to amend Annex VII in respect of expenditure that is eligible for operating support.

Article 17

Operating support for the Special Transit Scheme

1. The Instrument shall provide support to cover foregone fees from visas issued for the purpose of transit and additional costs incurred in implementing the facilitated transit scheme in accordance with Regulations (EC) No 693/2003 and (EC) No 694/2003.
2. The resources allocated to Lithuania for the Special Transit Scheme in accordance with point (a) of Article 7(3) shall be made available as additional operating support for Lithuania, including for investment in infrastructures, in accordance with the expenditure that is eligible for operating support within its programme referred to in Annex VII.
3. By way of derogation from Article 16(1), Lithuania may use the amount allocated to it in accordance with point (a) of Article 7(3) to finance operating support in addition to the amount referred to in Article 16(1).
4. The Commission and Lithuania shall review the application of this Article in the event of changes which have an impact on the existence or functioning of the Special Transit Scheme.
5. Following a reasoned request by Lithuania, the resources allocated for the Special Transit Scheme in accordance with in point (a) of Article 7(3) shall be reviewed and, where necessary, adjusted before the adoption of the last work programme for the thematic facility referred to in Article 8, within the limits of the budgetary resources referred to in point (b) of Article 7(3), through the thematic facility referred to in Article 8.

Article 18

Management verifications and audits of projects carried out by international organisations

1. This Article applies to international organisations or their agencies as referred to in point (c)(ii) of the first subparagraph of Article 62(1) of the Financial Regulation whose systems, rules and procedures have been positively assessed by the Commission pursuant to Article 154(4) and (7) of that Regulation for the purpose of indirectly implementing grants financed from the Union budget ('international organisations').
2. Without prejudice to point (a) of the first paragraph of Article 83 of Regulation (EU) .../... (*) and to Article 129 of the Financial Regulation, where the international organisation is a beneficiary as defined in point (9) Article 2 of Regulation (EU) .../... (*), the managing authority shall not be required to carry out the management verifications referred to in point (a) of the first subparagraph of Article 74(1) of Regulation (EU) .../... (*), provided that the international organisation submits to the managing authority the documents referred to in points (a), (b) and (c) of the first subparagraph of Article 155(1) of the Financial Regulation.

(*) Regulation contained in document ST 6674/21 (2018/0196 (COD)).

3. Without prejudice to point (c) of the first subparagraph of Article 155(1) of the Financial Regulation, the management declaration to be submitted by the international organisation shall confirm that the project complies with applicable law and the conditions for support of the project.

4. In addition, where costs are to be reimbursed pursuant to point (a) of Article 53(1) of Regulation (EU) .../... (*), the management declaration to be submitted by the international organisation shall confirm that:

- (a) invoices and proof of their payment by the beneficiary have been verified;
- (b) the accounting records or accounting codes maintained by the beneficiary for transactions linked to the expenditure declared to the managing authority have been verified.

5. Where costs are to be reimbursed pursuant to point (b), (c) or (d) of Article 53(1) of Regulation (EU) .../... (*), the management declaration to be submitted by the international organisation shall confirm that the conditions for reimbursement of expenditure have been met.

6. The documents referred to in points (a) and (c) of the first subparagraph of Article 155(1) of the Financial Regulation shall be provided to the managing authority together with each payment claim submitted by the beneficiary.

7. The beneficiary shall submit the accounts to the managing authority each year by 15 October. The accounts shall be accompanied by an opinion of an independent audit body that has been drawn up in accordance with internationally accepted audit standards. That opinion shall establish whether the control systems in place function properly and are cost-effective and whether the underlying transactions are legal and regular. That opinion shall also state whether the audit work puts in doubt the assertions made in the management declarations submitted by the international organisation, including information on suspicions of fraud. That opinion shall provide assurance that expenditure included in the payment claims submitted by the international organisation to the managing authority is legal and regular.

8. Without prejudice to existing possibilities for carrying out further audits as referred to in Article 127 of the Financial Regulation, the managing authority shall draw up the management declaration referred to in point (f) of the first subparagraph of Article 74(1) of Regulation (EU) .../... (*). The managing authority shall do so by relying on the documents provided by the international organisation pursuant to paragraphs 2 to 5 and 7 of this Article instead of by relying on the management verifications referred to in Article 74(1) of that Regulation.

9. The document setting out the conditions for support referred to in Article 73(3) of Regulation (EU) .../... (*), shall include the requirements set out in this Article.

10. Paragraph 2 shall not apply, and consequently a managing authority shall be required to carry out management verifications, where:

- (a) that managing authority identifies a specific risk of irregularity or an indication of fraud with respect to a project initiated or implemented by the international organisation;
- (b) the international organisation fails to submit to that managing authority the documents referred to in paragraphs 2 to 5 and 7; or
- (c) the documents referred to in paragraphs 2 to 5 and 7 that have been submitted by the international organisation are incomplete.

11. Where a project in which an international organisation is a beneficiary as defined in point (9) of Article 2 of Regulation (EU) .../... (*), is part of a sample as referred to in Article 79 of that Regulation, the audit authority may perform its work on the basis of a subsample of transactions that relate to that project. Where errors are found in the subsample, the audit authority, if relevant, may request the auditor of the international organisation to assess the full scope and the total amount of errors in that project.

SECTION 3

Support and implementation under direct or indirect management

Article 19

Scope

The Commission shall implement support under this Section either directly in accordance with point (a) of the first subparagraph of Article 62(1) of the Financial Regulation or indirectly in accordance with point (c) of that subparagraph.

(*) Regulation contained in document ST 6674/21 (2018/0196 (COD)).

*Article 20***Eligible entities**

1. The following entities are eligible for Union financing:
 - (a) legal entities established in:
 - (i) a Member State or an overseas country or territory linked to it;
 - (ii) a third country listed in the work programme, under the conditions specified in paragraph 3.
 - (b) legal entities created under Union law or any international organisation relevant for the purposes of the Instrument.
2. Natural persons are not eligible for Union financing.
3. Entities as referred to in point (a)(ii) of paragraph 1 shall participate as part of a consortium composed of at least two independent entities, at least one of which is established in a Member State.

Entities participating as part of a consortium as referred to in the first subparagraph of this paragraph shall ensure that the actions in which they participate comply with the principles enshrined in the Charter and contribute to the achievement of the objectives of the Instrument.

*Article 21***Union actions**

1. At the Commission's initiative, the Instrument may be used to finance Union actions related to the objectives of the Instrument, in accordance with Annex III.
2. Union actions may provide funding in any of the forms laid down in the Financial Regulation, in particular grants, prizes and procurement.
3. Grants implemented under direct management shall be awarded and managed in accordance with Title VIII of the Financial Regulation.
4. Members of the evaluation committee assessing the proposals, referred to in Article 150 of the Financial Regulation, may be external experts.
5. Contributions to a mutual insurance mechanism may cover the risk associated with the recovery of funds due by recipients and shall be considered a sufficient guarantee under the Financial Regulation. Article 37(7) of Regulation (EU) 2021/695 of the European Parliament and of the Council⁽⁵¹⁾ shall apply.

*Article 22***Technical assistance at the initiative of the Commission**

In accordance with Article 35 of Regulation (EU) 2021/... (*), the Instrument may support technical assistance implemented at the initiative of, or on behalf of, the Commission, at a financing rate of 100 %.

*Article 23***Audits**

Audits of the use of the Union contribution carried out by persons or entities, including by persons or entities other than those mandated by Union institutions, bodies, offices or agencies, shall form the basis of the overall assurance pursuant to Article 127 of the Financial Regulation.

*Article 24***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, meaningful and proportionate targeted information to multiple audiences, including the media and the public. The visibility of Union funding shall be ensured and such information shall be provided, except in duly justified cases where it is not possible or appropriate to display such information publicly or where the release of such information is restricted by law, in particular for reasons of security, public order, criminal investigations or the protection of personal data. To ensure the visibility of Union funding, recipients of Union funding shall refer to the origin of that funding when publicly communicating on the action concerned, and shall display the Union emblem.

⁽⁵¹⁾ Regulation (EU) 2021/695 of the European Parliament and of the Council of 28 April 2021 establishing Horizon Europe – the Framework Programme for Research and Innovation, laying down its rules for participation and dissemination, and repealing Regulations (EU) No 1290/2013 and (EU) No 1291/2013 (OJ L 170, 12.5.2021, p. 1).

(*) Regulation contained in document ST 6674/21 (2018/0196 (COD)).

2. To reach the widest possible audience, the Commission shall implement information and communication actions relating to the Instrument, to actions taken pursuant to the Instrument and to the results obtained.

Financial resources allocated to the Instrument shall also contribute to the corporate communication of the political priorities of the Union, insofar as those priorities are related to the objectives of the Instrument.

3. The Commission shall publish the work programmes of the thematic facility referred to in Article 8. For support provided under direct or indirect management, the Commission shall publish the information referred to in Article 38(2) of the Financial Regulation on a publicly available website and shall update that information regularly. That information shall be published in an open, machine-readable format which allows data to be sorted, searched, extracted and compared.

SECTION 4

Support and implementation under shared, direct or indirect management

Article 25

Emergency assistance

1. The Instrument shall provide financial assistance to address urgent and specific needs in the event of duly justified emergency situations.

In response to such duly justified emergency situations, the Commission may provide emergency assistance within the limits of available resources.

2. Emergency assistance may take the form of grants awarded directly to the decentralised agencies.

3. Emergency assistance may be allocated to Member States' programmes in addition to the allocation under Article 10(1), provided that it is subsequently earmarked as such in the Member States' programmes. That funding shall not be used for other actions in the Member State's programme except in duly justified circumstances and as approved by the Commission through the amendment of the Member State's programme. Pre-financing for emergency assistance may amount to 95 % of the Union contribution, subject to the availability of funds.

4. Grants implemented under direct management shall be awarded and managed in accordance with Title VIII of the Financial Regulation.

5. Where necessary for the implementation of an action, emergency assistance may cover expenditure which was incurred prior to the date of submission of the grant application or the request for assistance for that action, provided that that expenditure was not incurred prior to 1 January 2021.

6. Emergency assistance shall be provided in a manner that is entirely consistent with both the relevant Union *acquis* and international obligations of the Union and Member States arising from the international instruments to which they are party.

7. On duly justified imperative grounds of urgency and to ensure that there is a timely availability of resources for emergency assistance, the Commission may separately adopt a financing decision, as referred to in Article 110 of the Financial Regulation, for emergency assistance by way of an immediately applicable implementing act in accordance with the procedure referred to in Article 32(4). Such an act shall remain in force for a period not exceeding 18 months.

Article 26

Cumulative and alternative financing

1. An action that has received a contribution under the Instrument may also receive a contribution from any other Union programme, including Funds under shared management, provided that the contributions do not cover the same costs. The rules of the relevant Union programme shall apply to the corresponding contribution to the action. The cumulative financing 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.

2. In accordance with Article 73(4) of Regulation (EU) 2021/... (*), the European Regional Development Fund or the European Social Fund Plus may support actions attributed a Seal of Excellence label as defined in point (45) of Article 2 of that Regulation. In order to be attributed a Seal of Excellence label, the actions shall comply with the following cumulative conditions:

(a) they have been assessed in a call for proposals under the Instrument;

(*) Regulation contained in document ST 6674/21 (2018/0196 (COD)).

- (b) they comply with the minimum quality requirements of that call for proposals; and
- (c) they cannot be financed under that call for proposals due to budgetary constraints.

SECTION 5

Monitoring, reporting and evaluation

Subsection 1

Common provisions

Article 27

Monitoring and reporting

1. In compliance with its reporting requirements pursuant to point (h)(iii) of the first subparagraph of Article 41(3) of the Financial Regulation, the Commission shall present to the European Parliament and to the Council information on the core performance indicators listed in Annex V to this Regulation.
2. The Commission is empowered to adopt delegated acts in accordance with Article 31 to amend Annex V in order to make the necessary adjustments to the core performance indicators listed in that Annex.
3. Indicators to report on the progress of the Instrument towards the achievement of the specific objectives set out in Article 3(2) are set out in Annex VIII. For output indicators, the baselines shall be set at zero. The milestones set for 2024 and the targets set for 2029 shall be cumulative.
4. The Commission shall also report on the use of the thematic facility referred to in Article 8 for supporting actions in or in relation to third countries and the share of the thematic facility used for supporting such actions.
5. 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 recipients of Union funds and, where appropriate, on Member States.
6. To ensure the effective assessment of the Instrument's progress towards the achievement of its objectives, the Commission is empowered to adopt delegated acts in accordance with Article 31 to amend Annex VIII 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, including on information to be provided by the Member States. Any amendment to Annex VIII shall apply only to projects selected after the entry into force of that amendment.

Article 28

Evaluation

1. By 31 December 2024, the Commission shall carry out a mid-term evaluation of this Regulation. In addition to what is provided for in Article 45(1) of Regulation (EU) .../... (*), the mid-term evaluation shall assess the following:
 - (a) the effectiveness of the Instrument, including the progress made towards the achievement of its objectives, taking into account all relevant information already available, in particular the annual performance reports referred to in Article 29 and the output and result indicators set out in Annex VIII;
 - (b) the efficiency of the use of resources allocated to the Instrument and the efficiency of the management and control measures put in place to implement it;
 - (c) the continued relevance and appropriateness of the implementation measures listed in Annex II;
 - (d) the coordination, coherence and complementarity between the actions supported under the Instrument and support provided by other Union funds;
 - (e) the Union added value of actions implemented under the Instrument.

That mid-term evaluation shall take into account the results of the retrospective evaluation of the effects of the instrument for financial support for external borders and visa, as part of the Internal Security Fund, for the 2014-2020 period.

(*) Regulation contained in document ST 6674/21 (2018/0196 (COD)).

2. In addition to what is provided for in Article 45(2) of the Regulation (EU) .../... (*), the retrospective evaluation shall include the elements listed in paragraph 1 of this Article. Moreover, the impact of the Instrument shall be evaluated.
3. The mid-term evaluation and the retrospective evaluation shall be carried out in a timely manner in order to contribute to the decision-making process, including, where appropriate, to the revision of this Regulation.
4. The Commission shall ensure that information in the mid-term and retrospective evaluations is made publicly available, except in duly justified cases where the release of that information is restricted by law, in particular for reasons of the functioning or security of the external borders as part of European integrated border management, security, public order, criminal investigations or the protection of personal data.
5. In the mid-term evaluation and retrospective evaluation, the Commission shall pay particular attention to the evaluation of actions implemented with, in or in relation to third countries in accordance with Article 5 and Article 13 (12) and (13).

Subsection 2

Rules for shared management

Article 29

Annual performance reports

1. By 15 February 2023 and by 15 February of each subsequent year up to and including 2031, Member States shall submit to the Commission an annual performance report as referred to in Article 41(7) of Regulation (EU) .../... (*).

The reporting period shall cover the last accounting year, as defined in point (29) of Article 2 of Regulation (EU) .../... (*), preceding the year of submission of the report. The report submitted by 15 February 2023 shall cover the period from 1 January 2021.

2. The annual performance reports shall, in particular, set out information on:
 - (a) the progress in the implementation of the Member State's programme and in achieving the milestones and targets set out therein, taking into account the most recent data as required under Article 42 of Regulation (EU) .../... (*);
 - (b) any issues affecting the performance of the Member State's programme and the action taken to address them, including information on any reasoned opinions issued by the Commission in respect of infringement proceedings under Article 258 TFEU linked to the implementation of the Instrument;
 - (c) the complementarity between the actions supported under the Instrument and the support provided by other Union funds, in particular those actions taken in or in relation to third countries;
 - (d) the contribution of the Member State's programme to the implementation of the relevant Union *acquis* and action plans;
 - (e) the implementation of communication and visibility actions;
 - (f) the fulfilment of the applicable enabling conditions and their application throughout the programming period, in particular compliance with fundamental rights;
 - (g) the level of expenditure in accordance with Article 85(2) and (3) of Regulation (EU) 2018/1240 included in the accounts pursuant to the Article 98 of Regulation (EU) .../... (*).
 - (h) the implementation of projects in or in relation to a third country.

The annual performance reports shall include a summary covering all the points set out in the first subparagraph of this paragraph. The Commission shall ensure that the summaries provided by Member States are translated into all official languages of the Union and made publicly available.

3. The Commission may provide observations on annual performance reports within two months of the date of their receipt. Where the Commission does not provide observations by that deadline, the report shall be deemed to have been accepted.
4. On its website, the Commission shall provide the links to the websites referred to in Article 49(1) of Regulation (EU) .../... (*).

(*) Regulation contained in document ST 6674/21 (2018/0196 (COD)).

5. In order to ensure uniform conditions for the implementation of this Article, the Commission shall adopt an implementing act establishing the template for the annual performance report. That implementing act shall be adopted in accordance with the advisory procedure referred to in Article 32(2).

Article 30

Monitoring and reporting under shared management

1. Monitoring and reporting in accordance with Title IV of Regulation (EU) .../... (*) shall use, as appropriate, the codes for the types of intervention set out in Annex VI to this Regulation. To address unforeseen or new circumstances and to ensure the effective implementation of the funding, the Commission is empowered to adopt delegated acts in accordance with Article 31 to amend Annex VI.
2. The indicators set out in Annex VIII to this Regulation shall be used in accordance with Article 16(1) and Articles 22 and 42 of Regulation (EU) .../... (*).

CHAPTER III

TRANSITIONAL AND FINAL PROVISIONS

Article 31

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 the second subparagraph of Article 5(1), Article 13(17), Article 16(5), Article 27(2) and (6) and Article 30(1) shall be conferred on the Commission until 31 December 2027.
3. The delegation of powers referred to in the second subparagraph of Article 5(1), Article 13(17), Article 16(5), Article 27(2) and (6) and Article 30(1) 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 the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.
4. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement 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 the Council.
6. A delegated act adopted pursuant to the second subparagraph of Article 5(1), Article 13(17), Article 16(5), Article 27(2) and (6) or Article 30(1) 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 32

Committee procedure

1. The Commission shall be assisted by a committee (the 'Committee for the Home Affairs Funds'). That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.
2. Where reference is made to this paragraph, Article 4 of Regulation (EU) No 182/2011 shall apply.
3. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

Where the committee delivers no opinion, the Commission shall not adopt the draft implementing act and the third subparagraph of Article 5(4) of Regulation (EU) No 182/2011 shall apply.

4. Where reference is made to this paragraph, Article 8 of Regulation (EU) No 182/2011, in conjunction with Article 5 thereof, shall apply.

(*) Regulation contained in document ST 6674/21 (2018/0196 (COD)).

Article 33

Transitional provisions

1. This Regulation shall not affect the continuation of or modification of the actions initiated pursuant to Regulation (EU) No 515/2014 which shall continue to apply to those actions until their closure.
2. The financial envelope for the Instrument may also cover technical and administrative assistance expenses necessary to ensure the transition between the Instrument and the measures adopted pursuant to Regulation (EU) No 515/2014.
3. In accordance with point (a) of the second subparagraph of Article 193(2) of the Financial Regulation, taking into account the delayed entry into force of this Regulation, and in order to ensure continuity, for a limited period, costs incurred in respect of actions supported under this Regulation under direct management and which have already begun may be considered eligible for financing as of 1 January 2021, even if those costs were incurred before the grant application or the request for assistance was submitted.
4. Member States may continue after 1 January 2021 to support a project selected and started under Regulation (EU) No 515/2014, in accordance with Regulation (EU) No 514/2014, provided that all of the following conditions are met:
 - (a) the project has two phases identifiable from a financial point of view with separate audit trails;
 - (b) the total cost of the project exceeds EUR 2 500 000;
 - (c) payments made by the responsible authority to beneficiaries for the first phase of the project shall be included in payment requests to the Commission under Regulation (EU) No 514/2014 and expenditure for the second phase of the project shall be included in payment applications under Regulation (EU) .../... (*);
 - (d) the second phase of the project complies with the applicable law and is eligible for support from the Instrument under this Regulation and Regulation (EU) .../... (*);
 - (e) the Member State commits to complete the project, render it operational and report on it in the annual performance report submitted by 15 February 2024.

The provisions of this Regulation and Regulation (EU) .../... (*) shall apply to the second phase of a project as referred to in the first subparagraph of this paragraph.

This paragraph shall apply only to projects which have been selected under shared management pursuant to Regulation (EU) No 514/2014.

Article 34

Entry into force and application

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 the Member States in accordance with the Treaties.

Done at ...,

For the European Parliament
The President

...

For the Council
The President

...

(*) Regulation contained in document ST 6674/21 (2018/0196 (COD)).

ANNEX I

CRITERIA FOR THE ALLOCATION OF FUNDING TO THE MEMBER STATES' PROGRAMMES

1. The budgetary resources available under Article 10 shall be broken down between the Member States as follows:
 - (a) each Member State shall receive a fixed amount of EUR 8 000 000 in current prices from the Instrument at the start of the programming period only, with the exception of Cyprus, Malta and Greece, which shall each receive a fixed amount of EUR 28 000 000 in current prices;
 - (b) an amount of EUR 200 568 000 for the Special Transit Scheme referred to in Article 17 shall be allocated to Lithuania at the start of the programming period only; and
 - (c) the remaining budgetary resources referred to in Article 10 shall be distributed based on the following criteria:
 - (i) 30 % for external land borders;
 - (ii) 35 % for external sea borders;
 - (iii) 20 % for airports;
 - (iv) 15 % for consular offices.
2. The budgetary resources available under point (c)(i) and (ii) of paragraph 1 for external land borders and external sea borders shall be broken down between Member States as follows:
 - (a) 70 % for the weighted length of their external land borders and external sea borders; and
 - (b) 30 % for the workload at their external land and external sea borders, as determined in accordance with point (a) of paragraph 6.

The weighted length referred to in point (a) of the first subparagraph of this paragraph shall be established by applying the weighting factors referred to in paragraph 10 for each specific external border section.
3. The budgetary resources available under point (c)(iii) of paragraph 1 for airports shall be broken down between Member States in accordance with the workload at their airports, as determined in accordance with point (b) of paragraph 6.
4. The budgetary resources available under point (c)(iv) of paragraph 1 for consular offices shall be broken down between Member States as follows:
 - (a) 50 % for the number of consular offices, excluding honorary consulates, of the Member States in the countries listed in Annex I to Regulation (EU) 2018/1806 of the European Parliament and of the Council ⁽¹⁾, and
 - (b) 50 % for the workload relating to the management of visa policy at consular offices of Member States in the countries listed in Annex I to Regulation (EU) 2018/1806, as determined in accordance with point (c) of paragraph 6 of this Annex.
5. For the purpose of the distribution of resources under point (c)(ii) of paragraph 1 of this Annex, 'external sea borders' shall mean the outer limit of the territorial sea of the Member States as defined in accordance with Articles 4 to 16 of the United Nations Convention on the Law of the Sea. However, the definition of 'external sea borders' shall take into account cases where long range operations outside the outer limit of the territorial sea of the Member States have been carried out in high threat areas on a regular basis in order to prevent irregular immigration or illegal entry. The definition of 'external sea borders' in that regard shall be determined by taking into account operational data over the past two years as provided by the Member States concerned and as assessed by the European Border and Coast Guard Agency for the purposes of the report referred to in paragraph 9 of this Annex. That definition shall be used exclusively for the purposes of this Regulation.

⁽¹⁾ Regulation (EU) 2018/1806 of the European Parliament and of the Council of 14 November 2018 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement (OJ L 303, 28.11.2018, p. 39).

6. For the purposes of the initial allocation of funding, the assessment of the workload shall be based on the most recent average figures covering the years 2017, 2018 and 2019. For the purposes of the mid-term review, the assessment of the workload shall be based on the most recent average figures covering the years 2021, 2022 and 2023. The assessment of the workload shall be based on the following factors:

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

(i) 70 % for the number of crossings of the external borders at border crossing points;

(ii) 30 % for the number of third-country nationals refused entry at the external borders;

(b) at airports:

(i) 70 % for the number of crossings of the external borders at border crossing points;

(ii) 30 % for the number of third-country nationals refused entry at the external borders;

(c) at consular offices:

(i) the number of visa applications for short stays or airport transits.

7. The reference figures for the number of consular offices as referred to in point (a) of paragraph 4 shall be calculated on the basis of the information notified to the Commission in accordance with Article 40(4) of Regulation (EC) No 810/2009 of the European Parliament and of the Council ⁽²⁾.

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

8. The reference figures for the workload referred to:

(a) in points (a)(i) and (b)(i) of paragraph 6 shall be the most recent statistics provided by Member States in accordance with Union law;

(b) in points (a)(ii) and (b)(ii) of paragraph 6 shall be the most recent statistics produced by the Commission (Eurostat) on the basis of data provided by Member States in accordance with Union law;

(c) in point (c) of paragraph 6 shall be the most recent visa statistics as referred to in Article 46 of Regulation (EC) No 810/2009.

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

9. The European Border and Coast Guard Agency shall provide the Commission with a report on resources, broken down by external land borders, external sea borders and airports, as referred to in point (c) of paragraph 1. Parts of that report may be classified, where appropriate, in accordance with Article 92 of Regulation (EU) 2019/1896. After consultation of the Commission, the European Border and Coast Guard Agency shall make a non-classified version of the report publicly available.

10. For the purposes of the initial allocation, the report referred to in paragraph 9 of this Annex shall identify the average impact level for each border section based on the most recent average figures covering the years 2017, 2018 and 2019. For the purposes of the mid-term review, the report referred to in paragraph 9 of this Annex shall identify the average impact level for each border section based on the most recent average figures covering the years 2021, 2022 and 2023. It shall determine the following specific weighting factors per section applying the impact levels determined in accordance with Article 34(1) and (2) of Regulation (EU) 2019/1896:

(a) factor 1 for low impact level;

(b) factor 3 for medium impact level;

(c) factor 5 for high and critical impact level.

⁽²⁾ Regulation (EC) No 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas (Visa Code) (OJ L 243, 15.9.2009, p. 1).

ANNEX II

IMPLEMENTATION MEASURES

1. The Instrument shall contribute to the specific objective set out in point (a) of Article 3(2) by focusing on the following implementation measures:
 - (a) the improvement of border control in accordance with point (a) of Article 3(1) of Regulation (EU) 2019/1896 by:
 - (i) reinforcing capacities for carrying out checks and surveillance at the external borders, including measures to facilitate legitimate border crossings and, where appropriate, measures related to:
 - the prevention and detection of cross-border crime at the external borders, in particular migrant smuggling, trafficking in human beings, and terrorism;
 - the management of continuously high levels of migration at the external borders, including through technical and operational reinforcement and through mechanisms and procedures for the identification of vulnerable persons and unaccompanied minors and for the identification of persons who are in need of, or who wish to apply for, international protection, the provision of information to such persons, and the referral of such persons;
 - (ii) implementing technical and operational measures within the Schengen area which are related to border control, while safeguarding the free movement of persons within it;
 - (iii) carrying out analyses of the risks for internal security and analyses of the threats that may affect the functioning or security of the external borders;
 - (b) the development of the European Border and Coast Guard by providing support to national authorities responsible for border management to pursue measures related to capability development and common capacity building, joint procurement, the establishment of common standards and any other measures streamlining the cooperation and coordination between the Member States and the European Border and Coast Guard Agency;
 - (c) the enhancement of inter-agency cooperation at national level among the national authorities responsible for border control or for tasks carried out at the border, and enhancing cooperation at Union level between the Member States, or between the Member States, on the one hand, and the relevant Union bodies, offices and agencies or third countries, on the other;
 - (d) ensuring the uniform application of the Union *acquis* in relation to external borders, including through the implementation of recommendations from quality control mechanisms such as the Schengen evaluation mechanism in accordance with Regulation (EU) No 1053/2013, vulnerability assessments in accordance with Regulation (EU) 2019/1896 and national quality control mechanisms;
 - (e) the setting up, operation and maintenance of large-scale IT systems pursuant to Union law in the area of border management, in particular SIS, ETIAS, the EES and Eurodac for border management purposes, including the interoperability of those large-scale IT systems and their communication infrastructure, and actions to enhance data quality and the provision of information;
 - (f) increasing capacity to render assistance to persons in distress at sea and supporting search and rescue operations in situations which might arise during a border surveillance operation at sea;
 - (g) support to search and rescue operations in the context of carrying out border surveillance at sea.
2. The Instrument shall contribute to the specific objective set out in point (b) of Article 3(2) by focusing on the following implementation measures:
 - (a) the provision of efficient and client-friendly services to visa applicants while maintaining the security and integrity of visa procedures, and fully respecting the human dignity and the integrity of applicants and visa holders in accordance with Article 7(2) of Regulation (EC) No 767/2008;

- (b) support to Member States in issuing visas, including visas with limited territorial validity, as referred to in Article 25 of Regulation (EC) No 810/2009, issued on humanitarian grounds, for reasons of national interest or because of international obligations;
 - (c) ensuring the uniform application of the Union *acquis* in relation to visas, including the further development and modernisation of the common policy on visas;
 - (d) the development of different forms of cooperation between Member States in visa processing;
 - (e) the setting up, operation and maintenance of large-scale IT systems pursuant to Union law in the area of the common policy on visas, in particular the VIS, including the interoperability of those large-scale IT systems and their communication infrastructure, and actions to enhance data quality and the provision of information.
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ANNEX III

SCOPE OF SUPPORT

1. Within the specific objective set out in point (a) of Article 3(2), the Instrument shall in particular support the following:
 - (a) infrastructure, buildings, systems and services required at border crossing points and for border surveillance between border crossing points;
 - (b) operating equipment, including means of transport and ICT systems, required for effective and secure border control at border crossing points and for border surveillance, in accordance with standards developed by the European Border and Coast Guard Agency, where such standards exist;
 - (c) training in the field of, or contributing to the development of, European integrated border management, taking into account operational needs and risk analyses, including challenges identified in the recommendations referred to in Article 13(7), and full compliance with fundamental rights;
 - (d) the joint deployment of immigration liaison officers to third countries in accordance with Regulation (EU) 2019/1240 of the European Parliament and of the Council ⁽¹⁾ and secondments of border guards and other relevant experts to Member States or from a Member State to a third country, reinforcement of cooperation and operational capacity of networks of experts or liaison officers, and the exchange of best practices and boosting the capacity of European networks to assess, promote, support and develop Union policies;
 - (e) the exchange of best practices and expertise, studies, pilot projects, and other relevant actions aiming to implement or develop European integrated border management, including measures aiming to develop the European Border and Coast Guard, such as common capacity building, joint procurement, establishment of common standards and other measures streamlining the cooperation and coordination between the European Border and Coast Guard Agency and Member States, and measures related to the referral of vulnerable persons in need of assistance and persons who are in need of, or who wish to apply for, international protection;
 - (f) actions developing innovative methods or deploying new technologies with a potential for transferability to other Member States, in particular deploying the results of security research projects where such deployment has been identified by the European Border and Coast Guard Agency, acting under Article 66 of Regulation (EU) 2019/1896, as contributing to the development of operational capabilities of the European Border and Coast Guard;
 - (g) preparatory, monitoring, administrative and technical activities required to implement external border policies, including to strengthen the governance of the Schengen area by developing and implementing the evaluation mechanism, established by Regulation (EU) No 1053/2013 to verify the application of the Schengen *acquis* and Regulation (EU) 2016/399, including mission expenditure for experts of the Commission and the Member States participating in on-site visits and measures to implement recommendations issued following vulnerability assessments carried out by the European Border and Coast Guard Agency in accordance with Regulation (EU) 2019/1896;
 - (h) actions to enhance the quality of data stored in ICT systems and to improve the exercise of a data subject's rights to information, access to, and rectification and erasure of, his or her personal data, and to the restriction of the processing thereof;
 - (i) identification, fingerprinting, registration, security checks, debriefing, provision of information, medical and vulnerability screening and, where necessary, medical care and referral of third country nationals to the appropriate procedure at the external borders;
 - (j) actions that aim to enhance awareness of external border policies among stakeholders and the general public, including corporate communication of the political priorities of the Union;
 - (k) the development of statistical tools, methods and indicators that respect the principle of non-discrimination;

⁽¹⁾ Regulation (EU) 2019/1240 of the European Parliament and of the Council of 20 June 2019 on the creation of a European network of immigration liaison officers (OJ L 198, 25.7.2019, p. 88).

- (l) operating support for the implementation of European integrated border management.
2. Within the specific objective set out in point (b) of Article 3(2), the Instrument shall in particular support the following:
- (a) infrastructure and buildings required for the processing of visa applications and consular cooperation, including security measures, and other actions that aim to improve the quality of service for visa applicants;
 - (b) operating equipment and ICT systems required for the processing of visa applications and consular cooperation;
 - (c) training of consular and other staff contributing to the common visa policy and consular cooperation;
 - (d) the exchange of best practices and the exchange of experts, including the secondment of experts, as well as boosting the capacity of European networks to assess, promote, support and further develop Union policies and objectives;
 - (e) studies, pilot projects and other relevant actions, such as actions that aim to improve knowledge through analyses, monitoring and evaluation;
 - (f) actions developing innovative methods or deploying new technologies with a potential for transferability to other Member States, especially projects that aim to test and validate the outcome of Union-funded research projects;
 - (g) preparatory, monitoring, administrative and technical activities, including to strengthen the governance of the Schengen area by developing and implementing the evaluation mechanism as established by Regulation (EU) No 1053/2013 to verify the application of the Schengen *acquis*, including mission expenditure for experts of the Commission and the Member States participating in on-site visits;
 - (h) activities to raise awareness among stakeholders and the general public regarding visa policies, including corporate communication of the political priorities of the Union;
 - (i) the development of statistical tools, methods and indicators that respect the principle of non-discrimination;
 - (j) operating support for the implementation of the common visa policy;
 - (k) support to Member States in issuing visas, including visas with limited territorial validity, as referred to in Article 25 of Regulation (EC) No 810/2009, issued on humanitarian grounds, for reasons of national interest or because of international obligations.
3. Within the policy objective set out in Article 3(1), the Instrument shall in particular support the following:
- (a) infrastructure and buildings required for the hosting of large-scale IT systems and associated communication infrastructure components;
 - (b) equipment and communication systems necessary to ensure the proper functioning of large-scale IT systems;
 - (c) training and communication activities in relation to large-scale IT systems;
 - (d) the development and upgrading of large-scale IT systems;
 - (e) studies, proof of concepts, pilot projects and other relevant actions related to the implementation of large-scale IT systems, including their interoperability;
 - (f) actions developing innovative methods or deploying new technologies with a potential for transferability to other Member States, especially projects that aim to test and validate the outcome of Union-funded research projects;

- (g) the development of statistical tools, methods and indicators for large-scale IT systems in the field of visa policy and borders that respect the principle of non-discrimination;
 - (h) actions to enhance the quality of data stored in ICT systems and improve the exercise of a data subject's rights to information, access to, rectification and erasure of, his or her personal data, and to the restriction of the processing thereof;
 - (i) operating support for the implementation of large-scale IT systems.
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ANNEX IV

ACTIONS ELIGIBLE FOR HIGHER CO-FINANCING RATES IN ACCORDANCE WITH ARTICLE 12(3) AND ARTICLE 13(17)

- (1) The purchase of operating equipment, through joint procurement schemes with the European Border and Coast Guard Agency, to be put at the disposal of the European Border and Coast Guard Agency for its operational activities in accordance with Article 64(14) of Regulation (EU) 2019/1896;
 - (2) Measures supporting inter-agency cooperation between a Member State and a neighbouring third country with which the Union shares a common land or maritime border;
 - (3) The development of the European Border and Coast Guard Agency by providing support to national authorities responsible for border management to pursue measures related to common capacity building, joint procurement, the establishment of common standards and any other measures streamlining the cooperation and coordination between the Member States and the European Border and Coast Guard Agency, as outlined in point (b) of paragraph 1 of Annex II;
 - (4) The joint deployment of immigration liaison officers as referred to in Annex III;
 - (5) Measures within the framework of border control enhancing the identification of, and the immediate support to, victims of trafficking in human beings, as well as developing and supporting adequate referral mechanisms for those target groups and measures in the framework of border control enhancing cross-border cooperation for detecting traffickers;
 - (6) The development of integrated child protection systems at the external borders, including through the sufficient training of staff and the exchange of good practice among Member States and with the European Border and Coast Guard Agency;
 - (7) Measures deploying, transferring, testing and validating new methodology or technology, including pilot projects and follow-up measures to Union-funded research projects, as referred to in Annex III, and measures to enhance the quality of data stored in ICT systems in the field of visa policy and borders and to improve the exercise of a data subject's rights to information, access to, rectification and erasure of, his or her personal data, and to the restriction of the processing thereof, in the context of actions falling within the scope of the Instrument;
 - (8) Measures targeting the identification and referral to protection services of vulnerable persons and immediate assistance to such persons;
 - (9) Measures for setting up and running hotspot areas in Member States facing existing or potential exceptional and disproportionate migratory pressure;
 - (10) The further development of different forms of cooperation among Member States in visa processing, as outlined in point (d) of paragraph 2 of Annex II;
 - (11) Increasing the consular presence or representation of Member States in third countries whose nationals must be in possession of visas when crossing the external borders within the meaning of Regulation (EU) 2018/1806, in particular in third countries in which no Member State is currently present;
 - (12) Measures which aim to improve the interoperability of ICT systems.
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ANNEX V

CORE PERFORMANCE INDICATORS AS REFERRED TO IN ARTICLE 27(1)**Specific objective set out in point (a) of Article 3(2)**

1. The number of items of equipment registered in the technical equipment pool of the European Border Coast Guard Agency;
2. The number of items of equipment put at the disposal of the European Border Coast Guard Agency;
3. The number of initiated / improved forms of cooperation of national authorities with the EUROSUR national coordination centres;
4. The number of border crossings through automated border control systems and e-gates;
5. The number of addressed recommendations from Schengen evaluations and from vulnerability assessments in the area of border management;
6. The number of participants who report three months after a training activity that they are using the skills and competences acquired during that training activity;
7. The number of persons who have applied for international protection at border crossing points;
8. The number of persons refused entry by border authorities;

Specific objective set out in point (b) of Article 3(2)

1. The number of new / upgraded consulates outside the Schengen area:
 - 1.1 of which the number of consulates upgraded to enhance client-friendliness for visa applicants;
 2. The number of addressed recommendations from Schengen evaluations in the area of the common visa policy;
 3. The number of visa applications using digital means;
 4. The number of initiated / improved forms of cooperation set up among Member States in visa processing;
 5. The number of participants who report three months after a training activity that they are using the skills and competences acquired during that training activity.
-

ANNEX VI

TYPES OF INTERVENTION

TABLE 1: CODES FOR THE INTERVENTION FIELD DIMENSION

I. European integrated border management

001	Border checks
002	Border surveillance - air equipment
003	Border surveillance - land equipment
004	Border surveillance - maritime equipment
005	Border surveillance - automated border surveillance systems
006	Border surveillance - other measures
007	Technical and operational measures within the Schengen area which are related to border control
008	Situational awareness and exchange of information
009	Risk analysis
010	Processing of data and information
011	Hotspot areas
012	Measures related to the identification and referral of vulnerable persons
013	Measures related to the identification and referral of persons who are in need of, or who wish to apply for, international protection
014	European Border and Coast Guard development
015	Inter-agency cooperation - national level
016	Inter-agency cooperation - Union level
017	Inter-agency cooperation - with third countries
018	Joint deployment of immigration liaison officers
019	Large-scale IT systems - Eurodac for border management purposes
020	Large-scale IT systems - Entry/Exit System (EES)
021	Large-scale IT systems - European Travel Information and Authorisation System (ETIAS) - others
022	Large-scale IT systems - European Travel Information and Authorisation System (ETIAS) - Article 85(2) of Regulation (EU) 2018/1240
023	Large-scale IT systems - European Travel Information and Authorisation System (ETIAS) - Article 85(3) of Regulation (EU) 2018/1240
024	Large-scale IT systems - Schengen Information System (SIS)

TABLE 1: CODES FOR THE INTERVENTION FIELD DIMENSION

025	Large-scale IT systems - Interoperability
026	Operating support - Integrated border management
027	Operating support - Large-scale IT systems for border management purposes
028	Operating support - Special Transit Scheme
029	Data quality and data subjects' rights to information, access to, rectification and erasure of, their personal data, and to the restriction of the processing thereof
II. Common visa policy	
001	Improving visa application processing
002	Enhancing the efficiency, client-friendly environment and security at consulates
003	Document security / document advisers
004	Consular cooperation
005	Consular coverage
006	Large-scale IT systems - Visa Information System (VIS)
007	Other ICT systems for visa application processing purposes
008	Operating support - Common visa policy
009	Operating support - Large-scale IT systems for visa application processing purposes
010	Operating support - Special Transit Scheme
011	Issuance of visas with limited territorial validity
012	Data quality and data subjects' rights to information, access to, rectification and erasure of, their personal data, and to the restriction of the processing thereof
III. Technical assistance	
001	Information and communication
002	Preparation, implementation, monitoring and control
003	Evaluation and studies, data collection
004	Capacity building

TABLE 2: CODES FOR THE TYPE OF ACTION DIMENSION

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

TABLE 3: CODES FOR THE IMPLEMENTATION DIMENSION

001	Actions covered by Article 12(1)
002	Specific actions
003	Actions listed in Annex IV
004	Operating support
005	Actions covered by Article 12(5)
006	Emergency assistance

TABLE 4: CODES FOR THE PARTICULAR THEMES DIMENSION

001	Cooperation with third countries
002	Actions in or in relation to third countries
003	Implementation of Schengen evaluation recommendations
004	Implementation of vulnerability assessment recommendations
005	Actions supporting the development and operation of EUROSUR
006	None of the above

ANNEX VII

EXPENDITURE ELIGIBLE FOR OPERATING SUPPORT

(a) Within the specific objective set out in point (a) of Article 3(2), operating support shall cover the following costs to the extent that they are not covered by the European Border and Coast Guard Agency in the context of its operational activities:

- (1) staff costs, including for training;
- (2) maintenance or repair of equipment and infrastructure;
- (3) service costs within the scope of this Regulation;
- (4) running costs for operations;
- (5) costs related to real estate, including rental and depreciation.

A host Member State within the meaning of point (20) of Article 2 of Regulation (EU) 2019/1896 may use operating support for the purposes of covering its own running costs for its participation in the operational activities referred to in that point that fall within the scope of this Regulation or for the purposes of its national border control activities.

(b) Within the specific objective set out in point (b) of Article 3(2), operating support shall cover:

- (1) staff costs, including for training;
- (2) service costs;
- (3) maintenance or repair of equipment and infrastructure;
- (4) costs related to real estate, including rental and depreciation.

(c) Within the policy objective set out in Article 3(1), operating support for large-scale IT systems shall cover:

- (1) staff costs, including for training;
- (2) operational management and maintenance of large-scale IT systems and their communication infrastructures, including the interoperability of those systems and rental of secure premises.

(d) In addition to covering the costs listed in points (a), (b) and (c) of this Annex, operating support within Lithuania's programme shall provide support in accordance with Article 17(1).

ANNEX VIII

OUTPUT AND RESULT INDICATORS AS REFERRED TO IN ARTICLE 27(3)

Specific objective set out in point (a) of Article 3(2)*Output indicators*

1. The number of items of equipment purchased for border crossing points;
 - 1.1 of which the number of automated border control systems / self-service systems / e-gates purchased;
2. The number of items of infrastructure maintained / repaired;
3. The number of hotspot areas supported;
4. The number of facilities for border crossing points constructed / upgraded;
5. The number of aerial vehicles purchased;
 - 5.1 of which the number of unmanned aerial vehicles purchased;
6. The number of maritime transport means purchased;
7. The number of land transport means purchased;
8. The number of participants supported;
 - 8.1 of which the number of participants in training activities;
9. The number of immigration liaison officers deployed to third countries;
10. The number of IT functionalities developed / maintained / upgraded;
11. The number of large-scale IT systems developed / maintained / upgraded;
 - 11.1 of which the number of large-scale IT systems developed;
12. The number of cooperation projects with third countries;
13. The number of persons who have applied for international protection at border crossing points.

Result indicators

14. The number of items of equipment registered in the technical equipment pool of the European Border and Coast Guard Agency;
15. The number of items of equipment put at the disposal of the European Border and Coast Guard Agency;
16. The number of initiated / improved forms of cooperation of national authorities with the EUROSUR national coordination centres;
17. The number of border crossings through automated border control systems and e-gates;
18. The number of addressed recommendations from Schengen evaluations and from vulnerability assessments in the area of border management;
19. The number of participants who report three months after a training activity that they are using the skills and competences acquired during that training activity;
20. The number of persons refused entry by border authorities;

Specific objective set out in point (b) of Article 3(2)*Output indicators*

1. The number of projects supporting the digitalisation of visa processing;

2. The number of participants supported:
 - 2.1 of which the number of participants in training activities;
3. The number of staff deployed to consulates in third countries;
 - 3.1 of which the number of staff deployed for visa processing;
4. The number of IT functionalities developed / maintained / upgraded;
5. The number of large-scale IT systems developed / maintained / upgraded;
 - 5.1 of which the number of large-scale IT systems developed;
6. The number of items of infrastructure maintained / repaired;
7. The number of real estates rented / depreciated;

Result indicators

8. The number of new / upgraded consulates outside the Schengen area:
 - 8.1 of which the number of consulates upgraded to enhance client-friendliness for visa applicants;
 9. The number of addressed recommendations from Schengen evaluations in the area of the common visa policy;
 10. The number of visa applications using digital means;
 11. The number of initiated / improved forms of cooperation set up among Member States in visa processing;
 12. The number of participants who report three months after a training activity that they are using the skills and competences acquired during that training activity.
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Statement of the Council's reasons: Position (EU) No 29/2021 of the Council at first reading with a view to the adoption of a Regulation of the European Parliament and of the Council establishing, as part of the Integrated Border Management Fund, the Instrument for Financial Support for Border Management and Visa Policy

(2021/C 265/02)

I. INTRODUCTION

1. On 13 June 2018, the Commission put forward a proposal for a Regulation of the European Parliament and of the Council establishing, as part of the Integrated Border Management Fund, the instrument for financial support for border management and visa ⁽¹⁾ (hereafter 'BMVI' or 'the Instrument') under Heading 4 (Migration and Border Management) of the Multiannual Financial Framework (MFF) 2021-2027.
2. The European Parliament adopted its first-reading position ⁽²⁾ at its plenary session on 13 March 2019.
3. The European Economic and Social Committee adopted its opinion on 17 October 2018 ⁽³⁾.
4. The Committee of the Regions did not deliver an opinion on this Instrument.
5. On 7 June 2019, the Council adopted a partial general approach ⁽⁴⁾ which served as an initial mandate for negotiations with the European Parliament. On 12 October 2020, the Council adopted a full general approach ⁽⁵⁾ on the abovementioned proposal.
6. The co-legislators engaged in negotiations in the second half of 2019. At the trilogue on 10 December 2020, the co-legislators secured a provisional agreement, which was presented at the meeting of the Permanent Representatives Committee on 16 December 2020 ⁽⁶⁾. Work continued in 2021 in order to finalise work on recitals, terminology, retroactivity provisions to ensure continuity of funding and indicators.
7. The Permanent Representatives Committee analysed the final compromise text ⁽⁷⁾ with a view to agreement at its meeting on 24 February 2021.
8. On 1 March 2021, the European Parliament's Civil Liberties, Justice and Home Affairs (LIBE) Committee confirmed the political agreement. The Chair of the LIBE Committee sent a letter to the Chair of the Permanent Representatives Committee, confirming that, should the Council approve this text at first reading, after legal-linguistic revision, the Parliament would approve the Council's position at its second reading.
9. The Permanent Representatives Committee confirmed the political agreement ⁽⁸⁾ at its meeting on 10 March 2021.

II. OBJECTIVE

10. The policy objective of the Instrument is to ensure strong and effective European integrated border management at the external borders while safeguarding the free movement of persons and fundamental rights, thereby contributing to guaranteeing a high level of security in the Union.
11. The Instrument will contribute to the following specific objectives: (i) supporting effective European integrated border management at the external borders to facilitate legitimate border crossings, to prevent and detect illegal immigration and cross-border crime and to effectively manage migratory flows; (ii) supporting the common visa policy to ensure a harmonised approach with regard to the issuance of visas and to facilitate legitimate travel, while helping to prevent migratory and security risks.

⁽¹⁾ 10151/18 + ADD 1, ADD 1 COR 1.

⁽²⁾ 7403/19 (OJ C 23, 21.1.2021, p. 406).

⁽³⁾ 13606/18 (OJ C 62, 15.2.2019, p. 184).

⁽⁴⁾ 10141/19.

⁽⁵⁾ 11943/20.

⁽⁶⁾ 13863/20.

⁽⁷⁾ 6105/21.

⁽⁸⁾ 6690/21.

III. ANALYSIS OF THE COUNCIL'S POSITION AT FIRST READING

12. The European Parliament and the Council conducted negotiations with a view to concluding an agreement at the stage of the Council's position at first reading ('early second-reading agreement').
13. The text of the Council's position at first reading reflects the compromise reached in the negotiations between the European Parliament and the Council, facilitated by the Commission. The main elements of this compromise are summarised below.
14. Multipurpose equipment. The co-legislators agreed that assets purchased with a financial contribution from the Instrument will remain available to be used in other areas, including for customs, for maritime operations or for achieving the objectives of the two other Home Affairs funds (the AMIF and the ISF), subject to the condition of not exceeding 30 % of the total period for the use of the asset.
15. Minimum level of expenditure for visa policy. The co-legislators agreed to set a binding percentage of at least 10 % of Member States' programmes to cover expenditure under this specific objective. This binding percentage will not apply to the thematic facility. Member States will be allowed to depart from the minimum percentage only where a detailed explanation is included in their programmes.
16. Actions in and in relation to third countries. The co-legislators agreed that the Instrument will have the degree of flexibility needed for actions that support its objectives, whether these are carried out inside or outside the Union's borders. Those actions will have to be carried out in synergy and coherence with other actions outside the Union supported through other Unions instruments.
17. Role of Union agencies. The knowledge and expertise of the relevant Union agencies, in particular the European Border and Coast Guard Agency, the European Agency for the Operational Management of Large-Scale IT systems in the Area of Freedom, Security and Justice (eu-LISA) and the EU Agency for Fundamental Rights, will be taken into account as regards the areas of their competence in the development of the Member States' programmes. They could also be consulted by the Commission on actions included under operating support for which the agencies have particular expertise and in relation to monitoring and evaluation tasks.
18. Provisions on fundamental rights. The provisions on fundamental rights were streamlined across the legal text. In this context, a new article on 'non-discrimination and respect for fundamental rights' was introduced in the Regulation.
19. Budget top-up. The co-legislators agreed on an additional allocation of a maximum amount of EUR 1 billion in 2018 prices to be allocated to the thematic facility in accordance with Article 5 and Annex II of the MFF Regulation.
20. Delegated and implementing acts. The co-legislators agreed that Commission's work programmes will be adopted by implementing acts (examination procedure) and that Annex III (scope of support) will be amended by means of a delegated act.
21. Actions eligible for higher co-financing rates. Some actions were considered as a priority and their co-financing rates were increased. They include immediate support to victims of trafficking in human beings, the development of integrated child protection systems at the external borders, measures targeting the identification of vulnerable persons, immediate assistance to such persons and their referral to protection services, ETIAS operating costs, measures to enhance the quality of data stored in ICT systems in the field of visa and borders and measures to improve the interoperability of ICT systems.
22. Operating support. The maximum percentage for operating support was increased to 33 % of the amount allocated to the programme. Costs related to training activities and real estate will be covered for both objectives, borders and visa, broadening the initial scope proposed by the Commission.
23. Blending operations. The co-legislators decided not to include the possibility of using this type of financial support by the Instrument.
24. Transfer of resources (horizontal). A receiving clause was introduced to cater for the possible transfer to the Instrument, at the request of Member States, of up to 5 % of the initial allocation from any of the funds of the Common Provisions Regulation under shared management.
25. Pre-financing (horizontal). Specific pre-financing rates, departing from the Common Provisions Regulation, were agreed for the Instrument.

26. Control and audit of projects carried out by international organisations (horizontal). As a derogation to the Common Provisions Regulation, a new article was agreed to facilitate Member States' work with international organisations under shared management without altering their obligation to ensure the legality and regularity of expenditure declared to the Commission.

IV. CONCLUSION

27. The Council's position at first reading reflects the compromise agreed between the Council and the European Parliament, with the support of the Commission.
 28. The Council believes that its position at first reading represents a balanced compromise and that, once adopted, the new Regulation will play a key role in ensuring strong and effective European integrated border management at the external borders while safeguarding the free movement of persons and fundamental rights, thereby contributing to guaranteeing a high level of security in the Union.
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