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COM(2018) 474 final

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

**establishing, as part of the Integrated Border Management Fund,
the instrument for financial support for customs control equipment**

{SWD(2018) 347} - {SWD(2018) 348} - {SEC(2018) 315}

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

On 2 May 2018, the Commission adopted a package on the Multi-Annual Financial Framework for the period 2021-2027¹. The Commission proposed a new, modern long-term budget, tightly geared to the political priorities of the Union at 27. The proposed budget combines new instruments with modernised programmes to deliver efficiently on the Union's priorities. Building on those foundations, the Commission is proposing the establishment of a new Integrated Border Management Fund under the "Migration and Border Management" budget heading. This new Fund is aimed at providing vital and reinforced support to Member States to secure the common external borders of the Union.

The Integrated Border Management Fund will contribute to the further development of the common visa policy and the implementation of European integrated border management by Member States, to help combat irregular migration and facilitate legitimate travel and trade. Funding should continue to provide support to Member States to build and enhance their capacities in these areas and to reinforce cooperation, including with the relevant Union agencies. The Fund will also play a role in ensuring more uniformity in the performance of customs controls at the external borders, by addressing the current imbalances between the Member States due to geographical differences and differences in capacities and resources available. Within that framework, the proposed Integrated Border Management Fund (IBMF) will be composed of an instrument for financial support for border management and visa and an instrument for financial support for customs control equipment.

This proposal concerns only the Customs Control Equipment instrument. A separate proposal covering the border management and visa instrument is presented by the Commission in parallel.

This proposal provides for a date of application as of 1 January 2021 and is presented for a Union of 27 Member States, in line with the notification by the United Kingdom of its intention to withdraw from the European Union and Euratom based on Article 50 of the Treaty on European Union received by the European Council on 29 March 2017.

The multi-annual action programme for customs (Customs programme), which exists since 1991² allows an adequate funding for cooperation actions between customs authorities, for electronic systems as well as for the administrative capacity building and complements well national initiatives and investments in this area. However, it does not provide for the possibility and means to fund equipment that is used to perform customs controls at the EU external borders. This need has been up to present only marginally supported at EU level by

¹ COM(2018) 322 final.

² The Customs programme was established in 1991 by means of Council Decision of 20 June 1991 on the adoption of a programme of Community action on the subject of the vocational training of customs officials (Matthaeus programme); it was later by the whole family of Customs programme established by Decision No 210/97/EC of the European Parliament and of the Council of 19 December 1996 adopting an action programme for customs in the Community (Customs 2000) and its successor programmes established by Decisions No 105/2000/EC, No 253/2003/EC, No 624/2007/EC and Regulation (EU) No 1294/2013.

other instruments (Hercule III³, Structural Reform Support Programme⁴, European Structural and Investment Funds⁵).

During the negotiations on the Customs 2020 proposal in the Council, Member States called on the Commission to carry out "a cost-benefit analysis of detection equipment and related technology in order to facilitate the acquisition of modern customs control tools by customs authorities after 2020". Such call was inserted in recital 4 of Regulation (EU) No 1294/2013 establishing the Customs programme for the period 2014-2020. In addition, the Council adopted conclusions⁶ on 23 May 2017 inviting "the Commission to present a report, no later than mid-2018, on the provision of the necessary financial resources to purchase appropriate tools for customs controls (...), including the possibility of allocating these resources through a single fund."

Since then, Member States repeatedly expressed the need for financial support on customs control equipment and requested an in-depth analysis of the issue at the Customs Policy Group⁷.

In response to those requests, its 2016 Communication on Developing the Customs Union and its Governance⁸, the Commission acknowledged the issue and announced that it would consider and evaluate the possibility of financing equipment needs from future Commission financial programmes in the impact assessments of the next generation of Customs programme. This was followed, in March 2017, by Council conclusions on customs funding where the Council once again underlined "the need for the EU and its Member States to respond to and keep pace with the globalisation of trade and the simultaneous globalisation of crime, as well as to cope with the subsequent threats which require that there is adequate equipment to support the effective functioning of the Customs Union and for funding to equip Customs Authorities with the necessary technical equipment for the conduct of controls of goods crossing the EU external borders".

The Council therefore invited the Commission, by the end of 2017, "to consider and evaluate the possibility of funding technical equipment needs from future Commission financial programmes and improve coordination, and enhance the cooperation between Customs Authorities and other law enforcement authorities for funding purposes via a better EU-level partnership".

³ Regulation (EU) No 250/2014 of the European Parliament and of the Council of 26 February 2014 establishing a programme to promote activities in the field of the protection of the financial interests of the European Union (Hercule III programme) and repealing Decision No 804/2004/EC (OJ L 84, 20.3.2014, p. 6).

⁴ Regulation (EU) 2017/825 of the European Parliament and of the Council of 17 May 2017 on the establishment of the Structural Reform Support Programme for the period 2017 to 2020 and amending Regulations (EU) No 1303/2013 and (EU) No 1305/2013 (OJ L 129, 19.5.2017, p. 1).

⁵ https://ec.europa.eu/info/funding-tenders/funding-opportunities/funding-programmes/overview-funding-programmes/european-structural-and-investment-funds_en

⁶ <https://www.consilium.europa.eu/media/22301/st09581en17-vf.pdf> and <http://data.consilium.europa.eu/doc/document/ST-7586-2017-INIT/en/pdf>

⁷ The Customs Policy Group is an expert group established by the Commission to advise the Commission on issues related to the strategic customs policy issues; to monitor development of various aspects of the customs policy; to facilitate the exchange of views of Member States. For more information: <http://ec.europa.eu/transparency/regexpert/index.cfm?do=groupDetail.groupDetail&groupID=944>.

⁸ COM(2016) 813 final.

In several resolutions⁹, the European Parliament also considered that “the Customs Union is a cornerstone of the European Union as one of the largest trading blocks in the world, and whereas it is essential for the proper functioning of the single market for the benefit of both EU businesses and citizens”. Therefore, it also called upon the Commission “to come up with a clear, coherent and ambitious strategy and timeline to ensure that any elements that are necessary for the enforcement of the EU customs systems are covered by appropriate proposals that are aligned with and fit for purpose for the current evolution of global trade and the implementation of the EU trade policy agenda”. The specific objective of this instrument to contribute to adequate and equivalent customs control through the purchase, maintenance and upgrade of customs control equipment is precisely a reply to this request.

The new proposed instrument for Customs Control Equipment aims at improving equivalence in the performance of customs controls throughout Member States to avoid the diversion of flows of goods towards the weakest points. A dedicated Union intervention for customs control equipment will allow supporting the purchase, maintenance and upgrade of the eligible detection equipment for customs controls in the wide sense. The instrument will also cover detection equipment that is used for control purposes beyond customs controls as long as the latter remain the main purpose.

- **Consistency with existing policy provisions in the policy area**

This proposal is fully consistent with and will contribute to the achievement of the objectives of the Customs Union. Securing equivalent customs controls at the EU external border is indeed crucial to avoid the diversion of flows of goods towards the weakest points. This is important not only due to the traditional function of customs to collect revenue but also to ensure safety and security. At the same time, these controls governing the movement of goods across the external borders should not impair but rather facilitate legitimate trade. However, at present, there are imbalances that are partly due to differences in the capacities and resources available in Member States. Their ability to react to challenges generated by the constantly evolving global business models and supply chains depends not only on the human component but also on the availability of modern and reliable control equipment.

The proposed instrument will complement the actions foreseen under the Customs programme. In particular, the Customs Control Equipment instrument will only support the purchase, maintenance and upgrade of the eligible equipment, while the Customs programme will support all related actions, such as cooperation actions for the assessment of equipment needs or, where appropriate, training in relation to the equipment purchased.

- **Consistency with other Union policies**

This proposal is fully consistent with Union policies in the area of safety and security. Since the establishment of the customs union, the role of customs authorities in the management of the external border has undergone significant changes and their responsibilities now extend well beyond their traditional role in supervising and facilitating EU trade and its financial and economic interests. Customs are indeed taking on an increasing number of responsibilities in the field of safety and security. This new reality however does not affect only customs authorities but reaches out also to other departments or agencies such as the police, the border guards, health and consumer protection authorities. By funding equipment with multiple use (customs control, border control and security), while maintaining customs control as the main

⁹ See for example: European Parliament resolution on tackling the challenges of the Union Customs Code implementation (2016/3024(RSP))

purpose, this proposal will enable maximising the impact of the Union budget by supporting co-sharing and inter-operability of control equipment and thereby also supporting inter-agency cooperation as a component of the European integrated border management between all concerned stakeholders (customs authorities, border guards, etc.), as referred to in Article 4(e) of Regulation (EU) 2016/1624¹⁰.

There will be synergies between the EU Anti-fraud Programme, which pursues specifically the objective of protecting the financial interests of the Union, and the customs control equipment instrument, which supports the proper functioning of the customs union and, in so doing, contributes to the protection of the financial and economic interests of the Union and its Member States. The focus of each programme will be therefore distinct, but with potential for complementary action.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

• Legal basis

This Regulation establishes the Integrated Border Management Fund jointly with Regulation (EU).../2018 establishing the instrument for financial support for border management and visa. Given the broad range of objectives to be covered by the two instruments, different Treaty bases are needed. It is therefore not legally possible to establish the Integrated Border Management Fund as a single spending programme. It is therefore proposed to establish the Fund as a comprehensive financing framework comprising two sector-specific proposals – of which this is one.

As regards this proposal, financing customs control equipment requires combining several legal bases as the equipment may have several distinct but correlated purposes:

- Article 33 of the Treaty on the Functioning of the European Union (TFEU), which calls for Union action with regard to customs cooperation and the EU customs union;
- Article 114 TFEU, which calls for Union action with regard to the internal market; and
- Article 207 TFEU, which calls for Union action with regard to common commercial policy.

EU action is also justified because of obligations stemming from international agreements, in particular under the remit of the World Trade Organisation.

• Subsidiarity (for non-exclusive competence)

Although the customs union is an area of exclusive competence with a high degree of harmonised EU legislation, the implementation of this legislation remains with the individual Member States. Each Member State therefore determines the means, including equipment, it allocates for customs controls.

¹⁰ Regulation (EU) 2016/1624 of the European Parliament and of the Council of 14 September 2016 on the European Border and Coast Guard and amending Regulation (EU) 2016/399 of the European Parliament and of the Council and repealing Regulation (EC) No 863/2007 of the European Parliament and of the Council, Council Regulation (EC) No 2007/2004 and Council Decision 2005/267/EC (OJ L 251, 16.9.2016, p. 1).

However, at present, imbalances exist between Member States also due to geographical differences. Depending on the nature of the external border, Member States have different resources and needs for their customs control equipment. For example, large ports with huge volumes generate higher revenues, which in return increases the amounts available to customs authorities to cover their collection costs and at the same time allows synergies in the use of equipment. Long land borders with a high number of small border crossing points of trade, which require a lot of material and equipment to be fully equipped and operational, generate less revenue and therefore less resources available to customs authorities to cover their collection costs. Existing Union actions have proven to be limited and unsatisfactory. Furthermore, not acting at EU level on these imbalances risks aggravating the emerging political tensions and will ultimately increase the risk of creating possibilities for ill-intentioned citizens or economic operators to use the weakest border crossing points.

- **Proportionality**

The proposal does not go beyond what is necessary to achieve its objectives. The proposal builds on an element of centralisation – the creation of task forces composed of Member States assessing jointly the needs for equipment and identifying common optimal standards of equipment – in order to foster the purchase, maintenance and upgrade of homogeneous or streamlined minimal customs control equipment at the Union borders. Within the limits of the grant agreement, it then leaves the final decision on procurement to Member States.

The Commission shall, for the purpose of implementing the instrument, according to Article 17 of the Treaty of the European Union (TEU), exercise coordinating, executive and management functions, as laid down in the Treaties.

- **Choice of the instrument**

In line with the conclusion of the relevant impact assessment, EU intervention by means of a funding instrument is appropriate. A new Customs Control Equipment instrument is being proposed by the Commission as a regulation, as part of the Integrated Border Management Fund.

3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

- **Stakeholder consultations**

As a new initiative, the customs control equipment instrument cannot benefit directly from lessons learned from evaluations of past experience. However, the challenges and needs in the area of customs control equipment were examined in the context of a study on the post-2020 customs programme, commissioned to an external contractor. In particular, a dedicated survey and specific interviews and case studies were performed. Furthermore, an overall open public consultation took place from 10 January 2018 to 9 March 2018 on EU funds in the area of investment, research & innovation, Small and Medium-sized Enterprises and single market, which addressed inter alia the customs aspects. A summary of all these contributions is provided in Annex 2 of the Impact Assessment accompanying this proposal.

All these activities confirmed the need for Union action and expected strong EU added value. Indeed, the ever growing volumes of goods together with the increasing need for efficient and swift border control are underpinned not only by the traditional function of customs to collect revenue but also by the necessity to extensively reinforce the control of goods entering and exiting EU external borders to ensure safety and security. At the same time, these controls

governing the movement of goods across the external borders should not impair but rather facilitate legitimate trade. Customs control equipment is an essential element for fulfilling these objectives and there is accordingly an urgent need to foresee a dedicated Union instrument aimed at addressing current imbalances and thereby ensuring a uniform application of customs rules at the EU border.

- **Impact assessment**

This proposal is supported by an impact assessment covering jointly the proposals concerning the Asylum and Migration Fund, the Internal Security Fund and the Integrated Border Management Fund, which includes this instrument and the instrument for financial support for border management and visa.

The Impact Assessment received a positive opinion from the Regulatory Scrutiny Board on 13 April 2018, with a recommendation to explain further the new instrument for customs control equipment, including as regards the appropriateness of the direct management mode. This aspect was considered in the final version of the impact assessment, where clarifications were provided both in the body of the text and in a dedicated Annex 6 relating to the overall design of the instrument.

The main option assessed concerns indeed the management mode, i.e. whether the purchase, maintenance and evolution of customs control equipment covered by the instrument should build either on the provision of grants to national authorities or on shared management. Discussions with other Commission services implementing shared management showed clearly that, apart from its complexity, it would not provide the overall coherence and cross-border coordination needed for customs to ensure an equivalent level of control across all Member States. Moreover, in the absence of cooperation between Member States as each of them would draft its own national plan independently, shared management does not foster the sharing of experiences and exchange of expertise and best practices, which are important benefits expected from this intervention for a uniform application of EU customs rules.

The preferred option has therefore been direct management through the provision of grants to national authorities. The new EU intervention aims indeed at addressing current imbalances between Member States and ensuring equivalence in the performance of customs controls throughout the Customs Union. Such an objective requires obviously coordination beyond national borders, which a centralised approach through direct management is best placed to deliver. As the national authorities – and not the Union – should continue to own directly the equipment they use for carrying out their duties at EU borders, EU intervention would take the form of grants to Member States supporting the purchase, maintenance and evolution of customs control equipment in accordance with predefined standards per border type. Moreover, direct management is the delivery mechanism for existing actions in the customs field, whether under the Customs or Hercule III programmes. It is also an appropriate approach given that it will only involve a limited number of beneficiaries, i.e. the 27 Member States.

- **Simplification**

The instrument has been designed to remain very simple with an initial assessment of needs through task forces followed by the adoption of a work programme. Direct management will build on grants and allow the application of several simplifications foreseen by the Financial Regulation and its implementing rules, in particular the exceptions to calls for proposals.

- **Fundamental rights**

The proposal has no particular bearing on fundamental rights.

4. BUDGETARY IMPLICATIONS

The Commission's proposal for the next multi-annual framework includes a proposal of EUR 9 318 million (in current prices) for the Integrated Border Management Fund for the period 2021-2027. Within this global envelope, the financial resources available for the implementation of this specific Regulation amount to EUR 1.3 billion (in current prices).

Although significant in absolute terms, this amount represents only a proportion of the estimated investment gap. According to information gathered from Member States in 2014-2015, the investment gap was indeed estimated to about EUR 2.3 billion over 5 years. However, the Union intervention should not necessarily cover the whole estimated investment gap as the level of Union intervention should be analysed in the broader context of customs duties as an own resource, of which Member States retain currently 20 %¹¹, representing an amount of EUR 4.7 billion in 2015, to cover their customs expenses and investments.

Also, the level of Union intervention should be assessed in proportion of the total Union external trade volume, which customs controls contribute to monitor but also facilitate. In implementing the Union commercial policy, customs handle an enormous volume of trade on a daily basis: the total statistical value of EU-28 trade flow was 3.46 trillion € in 2016 (1.75 trillion € for export and 1.71 trillion € for import) or 9.5 billion € a day. The proposed Union intervention would thus represent less than 0,01% of the external trade volume.

The instrument will be implemented in direct management mode and in a priority-based manner. Work programmes will be established – together with the stakeholders by means of assessments of needs – stipulating the priorities for a specific period.

The customs control equipment instrument will have an impact on the Union and Member States revenue. Although not quantifiable, it is expected to facilitate and streamline the work done by Customs authorities for the collection of customs duties, as well as of VAT and excise duties at import. By increasing the quality of controls, customs administrations will be more efficient in protecting the financial and economic interests of the Union and its Member States.

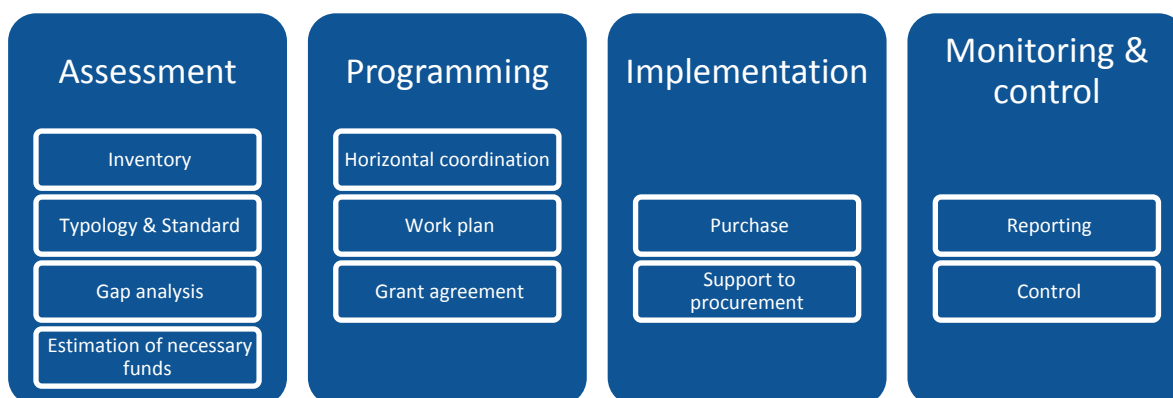
5. OTHER ELEMENTS

- **Implementation plans and monitoring, evaluation and reporting arrangements**

As a new field of EU intervention, it will be of utmost importance to ensure focus and delivery of the customs control equipment instrument. Also, policy choices will be needed before deploying completely the actions: whereas the ongoing Customs 2020 programme activity allowed taking stock of the situation at the EU external land borders and mapping it in terms of presence of customs officers and available equipment for all border crossing points concerned, only limited information is currently available for sea and air borders and for postal hubs.

¹¹ The Proposal (COM(2018) 325 final) for a Council Decision on the system of Own Resources of the European Union suggests a reduction of the collection costs retained by Member States from 20% to their original level of 10%.

Against this backdrop, a dedicated model tailored to the specific circumstances and needs of the instrument has been designed. It builds on the requirement of a central coordination – beyond national borders for delivering a level playing field – rooted deeply in national expertise and experience. Four building blocks corresponding to the four identified steps will help to deliver on the identified general and specific objectives:



Annex 6 to the Impact Assessment details each of these four building blocks. In a nutshell, the process will be as follows:

- The first step will consist in assessing the needs at each border type: land, sea, air, postal hubs. Concretely, it will replicate the successful CELBET¹² – Central and South-Eastern Land Border Expert Team – experience that made an inventory of equipment at the EU land border by processing more than 9200 data fields from 172 border crossing points, identified the main characteristics of these border crossing points and proposed a typology of border crossing points (e.g. road vs rail border crossings, with truck traffic or only with non-commercial traffic), identified the proposed equipment standards for each category and concluded with a gap analysis between the inventory and defined standards allowed estimating the necessary funds.
- The second step will focus on programming with the work programme and corresponding grant agreements as key outputs. As one separate assessment will be available for each border type, the work will not be limited to checking eligibility but rather extend to organising the allocation of funds in line with customs priorities, threats and volumes. In addition, policy choices will be required at the time of adoption of the work programme.
- The third steps will be implementation: once the grant agreements will be signed, Member States will source equipment in line with the contractual conditions.
- The fourth and final step will consist in monitoring and control.

To ensure regular monitoring and reporting, the proposal puts in place a specific framework for monitoring the results achieved by the instrument and actions under it. Such monitoring and reporting will be based on indicators measuring the effects of the actions under the instrument against pre-defined baselines. Proportionate reporting requirements will include some minimal information on equipment beyond a certain threshold.

Moreover, an interim evaluation and a final evaluation will be carried-out by the Commission. These evaluations will be carried out in line with paragraphs 22 and 23 of the

¹²

https://ec.europa.eu/taxation_customs/expert-teams-europa_en

Interinstitutional Agreement of 13 April 2016¹³, where the three institutions confirmed that evaluations of existing legislation and policy should provide the basis for impact assessments of options for further action. The evaluations will assess the instrument's effects on the ground based on indicators and targets and on a detailed analysis of the degree to which the instrument can be deemed relevant, effective, efficient, provides enough EU added value and is coherent with other EU policies. They will include lessons learnt to identify any lacks/problems or any potential to further improve the actions or their results and to help maximise their impact. They will also include identification and quantification of regulatory costs, benefits and savings.

- **Detailed explanation of the specific provisions of the proposal**

Chapter I: General provisions

This regulation establishes the Integrated Border Management Fund, jointly with Regulation (EU) [2018/XXX] establishing the instrument for financial support for border management and visa¹⁴. There are close links between the two instruments: the one covered by this proposal supports equipment aimed at the control of goods at Union borders whereas the purchase of equipment supported by the other instrument (that also supports other actions related to integrated border management) will focus exclusively on checks in the context of border management and visa. It is necessary to establish the Integrated Border Management Fund as a comprehensive financing framework comprising two sector-specific proposals due to the different Treaty bases to be used given the broad range of objectives to be covered.

This instrument is thus primarily oriented towards supporting the customs union and customs authorities. In line with the legal basis, equipment will thus be intended primarily for customs controls. This is however to be construed as covering not only the customs legislation but also other legislation as regards the movement of goods between the customs territory of the Union and outside, i.e. other legislation relating to the external aspects of the internal market, of the common trade policy and of other common Union policies having a bearing on trade, and to overall supply chain security.

The instrument aims at supporting the customs union and customs authorities to protect the financial and economic interests of the Union and its Member States, to ensure security and safety and to protect the Union from unfair and illegal trade while facilitating legitimate business activity. Concretely, the instrument will contribute to adequate and equivalent customs controls through the purchase, maintenance and upgrade of relevant, state-of-the-art and reliable customs control equipment.

The instrument will be implemented through direct management, in particular by means of grants. In order to ensure efficiency and interoperability between all the equipment purchased with the support of Union programmes, the Commission will set up a coordination mechanism in the context of the preparation of the work programmes.

Chapter II: Eligibility

The instrument will allow funding the purchase, maintenance and upgrade of eligible equipment, which is intended primarily for performing customs controls. As most customs

¹³ Interinstitutional Agreement between the European Parliament, the Council of the European Union and the European Commission on Better Law-Making of 13 April 2016 (OJ L 123, 12.5.2016, p. 1).

¹⁴ COM(2018) 473.

control equipment may be equally or incidentally fit for controls of compliance with other legislation (e.g. provisions on visa or on police), equipment that has purposes additional to customs controls is not excluded but its use for such other purposes is, on the contrary, explicitly allowed. This will maximise the impact of possible actions funded by this instrument.

In order to ensure focus and priority in the allocation of funding, the instrument includes specific eligibility criteria as well as non-eligible costs. Concretely, beyond a clear list of non-eligible costs, equipment shall be eligible only if it relates to at least one of the six following purposes: non-intrusive inspection; indication of hidden objects on humans; radiation detection and nuclide identification; analysis of samples in laboratories; sampling and field analysis of samples; handheld search. Annex 1 lays down an indicative list of equipment per customs control purpose. As needs may evolve over time, the Commission is empowered to review this list of control purposes as well as Annex 1 through delegated acts.

In addition to the purchase, maintenance and upgrade of eligible equipment, and where appropriate, the instrument will also support the purchase or upgrade of customs control equipment for testing new pieces or new functionalities in operational conditions. This is a necessary step before Member States start large-scale purchases of such new equipment. Testing in operational conditions is an additional step beyond research actions carried out in the framework of the Horizon programme. In order to reap all possible benefits from Union funding as well as avoid funding overlaps, the Commission will ensure an appropriate coordination between the two instruments as part of the preparation of the work programmes.

In order to bring the highest possible EU added value, the instrument will be open to all administrations of the Member States carrying out customs and related duties. In order to be eligible for funding, a customs authority of a Member State will have to provide the information necessary for the assessment of needs set out in Article 11(3).

Regulation (EU) [2018/XXX] of the European Parliament and of the Council¹⁵ establishes the "Customs" programme for cooperation in the field of customs to support the customs union and customs authorities. In order to preserve the coherence and horizontal coordination of cooperation actions, it is appropriate to implement all of them under one single legal act and set of rules. Therefore, this instrument will support only the purchase, maintenance and upgrade of the eligible customs control equipment while the Customs programme for cooperation in the field of customs will support related actions, such as cooperation actions for the assessment of needs or training relating to the equipment concerned.

Chapter III: Grants

Grants will be awarded in accordance with the provisions of the Financial Regulation. Considering the particular identity of the beneficiaries – being customs authorities of Member States – of the instrument and in accordance with the derogations foreseen by the Financial Regulation, the grants will be awarded without a call for proposals.

¹⁵ COM(2018) 442.

Whereas several programmes could contribute to one single action, funding overlaps should be excluded. A dedicated provision therefore prevents Union funding provided through several instruments to cover the same costs.

Chapter IV: Programming, monitoring, evaluation and control

The instrument will be implemented by work programmes to be adopted by the Commission in accordance with the examination procedure referred to in Article 5 of Regulation (EU) No 182/2011 of the European Parliament and the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by the Member States of the Commission's exercise of implementing powers.

The preparation of the work programme will be supported by assessments of needs as summarised above and detailed in Annex 6 of the Impact Assessment. These assessments of needs will be carried out under the Customs 2020 programme and, as from 2021, under the new Customs programme.

A comprehensive framework for monitoring, evaluation and reporting is put in place in order to ensure that the instrument delivers on its objectives. In particular, the evaluation reporting system shall ensure that data for instrument evaluation are collected efficiently, effectively, in a timely manner and at the appropriate level of granularity; such data and information shall be communicated to the Commission, in a way that complies with other legal provisions; for instance, when necessary, personal data shall be made anonymous. To that end, proportionate reporting requirements shall be imposed on recipients of Union funds.

Chapter V: Exercise of the delegation and committee procedure

The Commission is empowered to adopt delegated powers to:

- review the control purposes, i.e. the essential eligibility criteria as they may evolve significantly over time in view of customs priorities, threats and technology as well as
- amend Annex 2 to review or complement the indicators where considered necessary and to supplement this Regulation with provisions on the establishment of a monitoring and evaluation framework.

The committee will assist the Commission. In order to ensure the coherence and horizontal coordination of all customs actions under both this instrument and the Customs Programme, it is proposed that one single committee is established. As a committee already exists under the existing Customs 2020 programme and it is proposed to confirm it under the new Customs programme, it is proposed that this Customs Programme committee is also competent as regards this instrument.

Chapter VI: Transitional and final provisions

Coherent, effective and proportionate targeted information to multiple audiences will be ensured, including the media and public.

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

**establishing, as part of the Integrated Border Management Fund,
the instrument for financial support for customs control equipment**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Articles 33, 114 and 207 thereof,

Having regard to the proposal from the European Commission,

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

Having regard to the opinion of the European Economic and Social Committee¹,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) The 2 140 customs offices² that are present over the external borders of the European Union need to be properly equipped to ensure the operation of the customs union. The need for adequate and equivalent customs controls is ever more pressing not only by reason of the traditional function of customs to collect revenue but also increasingly by the necessity to significantly reinforce the control of goods entering and exiting Union's external borders in order to ensure both safety and security. However, at the same time, those controls on the movement of goods across the external borders should not impair but rather facilitate legitimate trade with third countries.
- (2) There is currently an imbalance in the performance of customs control by Member States. This imbalance is due both to geographic differences between Member States and in their respective capacities and resources. The ability of Member States to react to challenges generated by the constantly evolving global business models and supply chains depend not only on the human component but also on the availability of modern and reliable customs control equipment. The provision of equivalent customs control equipment is therefore an important element in addressing the existing imbalance. It will improve equivalence in the performance of customs controls throughout Member States and thereby avoid the diversion of the flows of goods towards the weakest points.
- (3) Member States have repeatedly expressed the need for financial support and requested an in-depth analysis of the equipment needed. In its conclusions³ on customs funding on 23 March 2017, the Council invited the Commission to "evaluate the possibility of funding technical equipment needs from future Commission financial programmes and

¹ OJ C , , p. .

² Annex of the Annual 2016 Report of the Customs Union Performance available on: https://ec.europa.eu/info/publications/annual-activity-report-2016-taxation-and-customs-union_en.

³ <https://www.consilium.europa.eu/media/22301/st09581en17-vf.pdf> and <http://data.consilium.europa.eu/doc/document/ST-7586-2017-INIT/en/pdf>.

improve coordination and (...) cooperation between Customs Authorities and other law enforcement authorities for funding purposes".

- (4) Under Regulation (EU) No 952/2013 of the European Parliament and of the Council⁴, customs controls are to be understood not only as the supervision of customs legislation but also other legislation governing the entry, exit, transit, movement, storage and end-use of goods moved between the customs territory of the Union and countries or territories outside that territory, and the presence and movement within the customs territory of the Union of non-Union goods and goods placed under the end-use procedure. Such other legislation empowering customs authorities with specific tasks of control includes provisions on taxation, in particular as regards excise duties and value added tax, on the external aspects of the internal market, on the common trade policy and other common Union policies having a bearing on trade, on the overall supply chain security and on the protection of the financial and economic interests of the Union and its Member States.
- (5) Supporting the creation of an adequate and equivalent level of customs controls at the Union's external borders allows maximising the benefits of the customs union. A dedicated Union intervention for customs control equipment correcting current imbalances would moreover contribute to the overall cohesion between Member States. In view of the challenges facing the world, in particular the continued need to protect the financial and economic interests of the Union and its Member States while easing the flow of legitimate trade, the availability of modern and reliable control equipment at the external borders is indispensable.
- (6) It is therefore opportune to establish a new Instrument for financial support for customs control equipment.
- (7) As customs authorities of the Member States have been taking up an increasing number of responsibilities, which often extend to the field of security and take place at the external border, ensuring equivalence in carrying out border control and customs control at the external borders needs to be addressed by providing adequate Union financial support to the Member States. It is equally important to promote inter-agency cooperation at Union borders as regards controls of goods and controls of persons among the national authorities in each Member State that are responsible for border control or for other tasks carried out at the border.
- (8) It is therefore necessary to establish an Integrated Border Management Fund ('the Fund').
- (9) Due to the legal particularities applicable to Title V of the TFEU as well as the different applicable legal bases regarding the policies on external borders and on customs control, it is not legally possible to establish the Fund as a single instrument.
- (10) The Fund should therefore be established as a comprehensive framework for Union financial support in the field of border management comprising the Instrument for financial support for customs control equipment ('the Instrument') established by this Regulation as well as the instrument for financial support for border management and visa established by Regulation (EU) No .../... of the European Parliament and of the Council⁵.

⁴ Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code (OJ L 269, 10.10.2013, p. 1).

⁵ COM(2018) 473.

- (11) This Regulation lays down a financial envelope for the Instrument, which is to constitute the prime reference amount, within the meaning of point 17 of the Interinstitutional Agreement of 2 December 2013 between the European Parliament, the Council and the Commission on budgetary discipline, on cooperation in budgetary matters and on sound financial management⁶, for the European Parliament and the Council during the annual budgetary procedure.
- (12) Regulation (EU, Euratom) [2018/XXX] of the European Parliament and of the Council⁷ (the 'Financial Regulation') applies to this Instrument. It lays down rules on the implementation of the Union budget, including the rules on grants.
- (13) Regulation (EU) [2018/XXX] of the European Parliament and of the Council⁸ establishes the "Customs" programme for cooperation in the field of customs to support the customs union and customs authorities. In order to preserve the coherence and horizontal coordination of cooperation actions, it is appropriate to implement all of them under one single legal act and set of rules. Therefore, only the purchase, maintenance and upgrade of the eligible customs control equipment should be supported under this Instrument while the Customs programme for cooperation in the field of customs should support related actions, such as cooperation actions for the assessment of needs or training relating to the equipment concerned.
- (14) In addition, and where appropriate, the Instrument should also support the purchase or upgrade of customs control equipment for testing new pieces or new functionalities in operational conditions before Member States start large-scale purchases of such new equipment. Testing in operational conditions should follow up in particular on the outcomes of research of customs control equipment in the framework of Regulation (EU) [2018/XXX]⁹.
- (15) Most customs control equipment may be equally or incidentally fit for controls of compliance with other legislation, such as provisions on border management, visa or police cooperation. The Integrated Border Management Fund has therefore been conceived as two complementary instruments with distinct but coherent scopes for the purchase of equipment. On the one hand, the instrument for border management and visa established by Regulation [2018/XXX]¹⁰ will exclude equipment that can be used for both border management and customs control. On the other hand, the instrument for financial support for customs control equipment established by this Regulation will not only support financially equipment with customs controls as the main purpose but will also allow its use as well for additional purposes such as border controls and security. This distribution of roles will foster inter-agency cooperation as a component of the European integrated border management approach, as referred to in Article 4(e) of Regulation (EU) 2016/1624¹¹, thereby enabling customs and border authorities to

⁶ Interinstitutional Agreement of 2 December 2013 between the European Parliament, the Council and the Commission on budgetary discipline, on cooperation in budgetary matters and on sound financial management (OJ C 373, 20.12.2013, p. 1).

⁷ COM(2016) 605.

⁸ COM(2018) 442.

⁹ COM(2018) 435.

¹⁰ COM(2018) 473.

¹¹ Regulation (EU) 2016/1624 of the European Parliament and of the Council of 14 September 2016 on the European Border and Coast Guard and amending Regulation (EU) 2016/399 of the European Parliament and of the Council and repealing Regulation (EC) No 863/2007 of the European Parliament and of the Council, Council Regulation (EC) No 2007/2004 and Council Decision 2005/267/EC (OJ L 251, 16.9.2016, p. 1).

work together and maximising the impact of the Union budget through co-sharing and inter-operability of control equipment.

- (16) By way of derogation from the Financial Regulation, funding of an action by several Union programmes or instruments should be possible in order to allow and support, where appropriate, cooperation and interoperability across domains. However, in such cases, the contributions may not cover the same costs in accordance with the principle of prohibition of double funding established by the Financial Regulation.
- (17) In view of the rapid evolution of customs priorities, threats and technologies, work programmes should not span over long periods of time. At the same time, the need to establish annual work programmes increases the administrative burden for both the Commission and Member States without it being necessary for the implementation of the Instrument. Against that backdrop, work programmes should in principle cover more than one budgetary year.
- (18) In order to ensure uniform conditions for the implementation of the work programme under this Regulation, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) 182/2011 of the European Parliament and of the Council¹².
- (19) Although central implementation is indispensable in order to achieve the specific objective of ensuring equivalent customs controls, given the technical nature of this Instrument, preparatory work is required at technical level. Therefore, implementation should be supported by assessments of needs that are dependent on national expertise and experience through the involvement of customs administrations of the Member States. Those assessments of needs should be based on a clear methodology including a minimum number of steps ensuring the collection of the required information.
- (20) To ensure regular monitoring and reporting, a proper framework for monitoring the results achieved by the Instrument and actions under it should be put in place. Such monitoring and reporting should be based on indicators measuring the effects of the actions under the Instrument. Reporting requirements should include some information on customs control equipment beyond a certain cost threshold.
- (21) Pursuant to paragraph 22 and 23 of the Inter-institutional agreement for Better Law-Making of 13 April 2016¹³, there is a need to evaluate this Instrument on the basis of information collected through specific monitoring requirements, while avoiding overregulation and administrative burdens, in particular on Member States. These requirements, where appropriate, can include measurable indicators, as a basis for evaluating the effects of the Instrument on the ground.
- (22) In order to respond appropriately to evolving policy priorities, threats and technologies, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission in respect of amending the customs control purposes for actions eligible under the Instrument and the list of indicators to measure the achievement of the specific objectives. It is of particular importance that the Commission carries out appropriate

¹² 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).

¹³ Interinstitutional Agreement between the European Parliament, the Council of the European Union and the European Commission on Better Law-Making of 13 April 2016 (OJ L 123, 12.5.2016, p. 1).

consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement on Better Law-Making of 13 April 2016. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.

- (23) In accordance with the Financial Regulation, Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council¹⁴, Council Regulation (Euratom, EC) No 2988/95¹⁵, Council Regulation (Euratom, EC) No 2185/96¹⁶ and Regulation (EU) 2017/1939¹⁷, the financial interests of the Union are to be protected through proportionate measures, including the prevention, detection, correction and investigation of irregularities and fraud, the recovery of funds lost, wrongly paid or incorrectly used and, where appropriate, the imposition of administrative sanctions. In particular, in accordance with Regulation (EU, Euratom) No 883/2013 and Regulation (Euratom, EC) No 2185/96, the European Anti-Fraud Office (OLAF) may carry out administrative investigations, including on-the-spot checks and inspections, with a view to establishing whether there has been fraud, corruption or any other criminal offences affecting the financial interests of the Union. In accordance with Regulation (EU) 2017/1939, the European Public Prosecutor's Office (EPPO) may investigate and prosecute fraud and other illegal activities affecting the financial interests of the Union as provided for in Directive (EU) 2017/1371 of the European Parliament and of the Council¹⁸. In accordance with the Financial Regulation, any person or entity receiving Union funds is to fully cooperate in the protection of the Union's financial interests, to grant the necessary rights and access to the Commission, OLAF, the EPPO and the European Court of Auditors and to ensure that any third parties involved in the implementation of Union funds grant equivalent rights.
- (24) Horizontal financial rules adopted by the European Parliament and the Council on the basis of Article 322 of the Treaty on the Functioning of the European Union apply to this Regulation. These rules are laid down in the Financial Regulation and determine in particular the procedure for establishing and implementing the budget through grants, procurement, prizes, indirect implementation, and provide for checks on the responsibility of financial actors. Rules adopted on the basis of Article 322 TFEU also concern the protection of the Union's budget in case of generalised deficiencies as regards the rule of law in the Member States, as the respect for the rule of law is an essential precondition for sound financial management and effective EU funding.

¹⁴ Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) and repealing Regulation (EC) No 1073/1999 of the European Parliament and of the Council and Council Regulation (Euratom) No 1074/1999 (OJ L248, 18.9.2013, p. 1).

¹⁵ Council Regulation (EC, Euratom) No 2988/95 of 18 December 1995 on the protection of the European Communities financial interests (OJ L 312, 23.12.95, p.1).

¹⁶ Council Regulation (Euratom, EC) No 2185/96 of 11 November 1996 concerning on-the-spot checks and inspections carried out by the Commission in order to protect the European Communities' financial interests against fraud and other irregularities (OJ L292, 15.11.96, p.2).

¹⁷ Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office ('the EPPO') (OJ L283, 31.10.2017, p.1).

¹⁸ 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).

- (25) The types of financing and the methods of implementation under this Regulation should be chosen on the basis of their ability to achieve the specific objective of the actions and to deliver results, taking into account, in particular, the costs of controls, the administrative burden, and the expected risk of non-compliance. This should include consideration of the use of lump sums, flat rates and unit costs, as well as financing not linked to costs as referred to in Article 125(1) of the Financial Regulation.
- (26) Since the objective of this Regulation, which is to establish a Instrument that supports the customs union and customs authorities, cannot be sufficiently achieved by the Member States alone further to objective imbalances existing at geographical level amongst them, but can rather, by reason of the equivalent level and quality of custom control that a coordinated approach and a centralised funding will help providing, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective,

HAVE ADOPTED THIS REGULATION:

CHAPTER I

GENERAL PROVISIONS

Article 1

Subject matter

1. This Regulation establishes the Instrument for financial support for customs control equipment ('the Instrument'), as part of the Integrated Border Management Fund ('the Fund') to provide financial support for the purchase, maintenance and upgrade of customs control equipment.
2. Jointly with Regulation [2018/XXX] establishing, as part of the Integrated Border Management Fund, the instrument for financial support for border management and visa¹⁹, this Regulation establishes the Fund.
3. It lays down the objectives of the Instrument, the budget for the period 2021 – 2027, the forms of Union funding and the rules for providing such funding.

Article 2

Definitions

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

- (1) 'customs authorities' means the authorities defined in point (1) of Article 5 of Regulation (EU) 952/2013;

¹⁹ COM(2018) 473.

- (2) 'customs controls' means the specific acts defined in point (3) of Article 5 of Regulation (EU) 952/2013;
- (3) 'customs control equipment' means equipment intended primarily for performing customs controls;
- (4) 'mobile customs control equipment' means any means of transport that, beyond its mobile capacities, is intended itself to be a piece of customs control equipment or is fully equipped with customs control equipment;
- (5) 'maintenance' means preventive, corrective and predictive interventions, including operational and functional checks, servicing, repair and overhaul but excluding upgrading, necessary for retaining or restoring a piece of customs control equipment to its specified operable condition to achieve its maximum useful life;
- (6) 'upgrade' means evolutive interventions necessary for bringing an existing piece of customs control equipment from an outdated to a state-of-the-art specified operable condition.

Article 3

Instrument objectives

- 1. As part of the Integrated Border Management Fund, the Instrument has the general objective to support the customs union and customs authorities to protect the financial and economic interests of the Union and its Member States, to ensure security and safety within the Union and to protect the Union from unfair and illegal trade while facilitating legitimate business activity.
- 2. The Instrument has the specific objective of contributing to adequate and equivalent customs controls through the purchase, maintenance and upgrade of relevant, state-of-the-art and reliable customs control equipment.

Article 4

Budget

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

Article 5

Implementation and forms of EU funding

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

CHAPTER II

ELIGIBILITY

Article 6

Eligible actions

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

Annex 1 lays down an indicative list of customs control equipment that may be used to achieve the customs control purposes referred to in points (1) to (6).
2. By way of derogation from paragraph 1, in duly justified cases, the actions may also cover the purchase, maintenance and upgrade of customs controls equipment for testing new pieces or new functionalities in operational conditions.
3. The Commission is empowered to adopt delegated acts in accordance with Article 14 to amend the customs control purposes set out in point (b) of paragraph 1 as well as Annex 1 where such review is considered necessary.
4. Customs control equipment financed under this Instrument may be used for purposes additional to customs controls, including for control of persons in support of the national border management authorities and investigation.

Article 7

Eligible entities

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

Article 8

Co-financing rate

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

Article 9

Eligible costs

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

- (a) costs related to the purchase of land;
- (b) costs relating to infrastructure, such as buildings or outdoor facilities, as well as to furniture;
- (c) costs associated with electronic systems, with the exception of software directly necessary to use the customs control equipment;
- (d) costs of networks, such as secured or unsecured communication channels, or subscriptions;
- (e) costs of transport means, such as vehicles, aircrafts or ships, with the exception of mobile customs control equipment;
- (f) costs of consumables, including reference or calibration material, for customs control equipment;
- (g) costs relating to personal protective equipment.

CHAPTER III

GRANTS

Article 10

Award, complementarity and combined funding

1. Grants under the Instrument shall be awarded and managed in accordance with Title VIII of the Financial Regulation.
2. In accordance with Article 195(f) of the Financial Regulation, grants shall be awarded without a call for proposals to the eligible entities referred to in Article 7.

3. By way of derogation from Article 191 of the Financial Regulation, an action that has received a contribution from the Customs programme for cooperation in the field of customs established by Regulation (EU) [2018/XXX]²⁰ or from any other Union programme may also receive a contribution under the Instrument, provided that the contributions do not cover the same costs. The rules of each contributing Union programme shall apply to its respective contribution to the action. The cumulative funding shall not exceed the total eligible costs of the action and the support from the different Union programmes may be calculated on a pro-rata basis in accordance with the documents setting out the conditions for support.

CHAPTER IV

PROGRAMMING, MONITORING AND EVALUATION

Article 11

Work programme

1. The Instrument shall be implemented by work programmes referred to in Article 110(2) of the Financial Regulation.
2. The work programmes shall be adopted by the Commission by means of an implementing act. That implementing act shall be adopted in accordance with the examination procedure referred to in Article 15.
3. The preparation of the work programmes referred to in paragraph 1 shall be supported by an assessment of needs, which shall consist of the following at a minimum:
 - (a) a common categorisation of border crossing points;
 - (b) an exhaustive inventory of available customs control equipment;
 - (c) a common definition of a minimum and an optimal standard of customs control equipment by reference to the category of border crossing points and
 - (d) a detailed estimate of financial needs.

The assessment of needs shall result from actions carried out under the Customs 2020 programme established by Regulation (EU) No 1294/2013 of the European Parliament and of the Council²¹ or under the Customs programme for cooperation in the field of customs established by Regulation (EU) [2018/XXX]²² and shall be updated regularly and at a minimum every 3 years.

²⁰ COM(2018) 442.

²¹ Regulation (EU) No 1294/2013 of the European Parliament and of the Council of 11 December 2013 establishing an action programme for customs in the European Union for the period 2014-2020 (Customs 2020) and repealing Decision No 624/2007/EC (OJ L 347, 20.12.2013, p. 209).

²² COM(2018) 442.

Article 12

Monitoring and reporting

1. Indicators to report on progress of the Instrument towards the achievement of the general and specific objectives set out in Article 3 are set out in Annex 2.
2. To ensure effective assessment of progress of the Instrument towards the achievement of its objectives, the Commission is empowered to adopt delegated acts in accordance with Article 14 to amend Annex 2 to review or complement the indicators where considered necessary and to supplement this Regulation with provisions on the establishment of a monitoring and evaluation framework.
3. The performance reporting system shall ensure that data for monitoring the implementation and results of the Instrument are collected efficiently, effectively, and in a timely manner. To that end, proportionate reporting requirements shall be imposed on recipients of Union funds.
4. The reporting requirements referred to in paragraph 3 shall include at least the annual communication to the Commission of the following information where the cost of a piece of customs control equipment exceeds EUR 10 000 exclusive of taxes:
 - (a) commissioning and decommissioning dates of the customs control equipment;
 - (b) statistics on the use of the customs control equipment;
 - (c) information on results from the use of the customs control equipment.

Article 13

Evaluation

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

CHAPTER V

EXERCISE OF THE DELEGATION AND COMMITTEE PROCEDURE

Article 14

Exercise of the delegation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.
2. The power to adopt delegated acts referred to in Articles 6(3) and 12(2) shall be conferred on the Commission until 31 December 2028.
3. The delegation of power referred to in Articles 6(3) and 12(2) may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal* of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.
4. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement on Better Law-Making of 13 April 2016.
5. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.
6. A delegated act adopted pursuant to Articles 6(3) and 12(2) shall enter into force if no objection has been expressed either by the European Parliament or by the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.

Article 15

Committee procedure

1. The Commission shall be assisted by the “Customs Programme Committee” referred to in Article 18 of Regulation (EU) [2018/XXX]²³.
2. Where reference is made to this paragraph, Article 5 of Regulation (EU) 182/2011 shall apply.

²³ COM(2018) 442.

CHAPTER VI

TRANSITIONAL AND FINAL PROVISIONS

Article 16

Information, communication and publicity

1. The recipients of Union funding shall acknowledge the origin and ensure the visibility of the Union funding (in particular when promoting the actions and their results) by providing coherent, effective and proportionate targeted information to multiple audiences, including the media and the public.
2. The Commission shall implement information and communication actions relating to the Instrument, and its actions and results. Financial resources allocated to the Instrument shall also contribute to the corporate communication of the political priorities of the Union, as far as they are related to the objectives referred to in Article 3.

Article 17

Transitional provisions

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

Article 18

Entry into force

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

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

Done at Brussels,

For the European Parliament
The President

For the Council
The President

LEGISLATIVE FINANCIAL STATEMENT

1. FRAMEWORK OF THE PROPOSAL/INITIATIVE

- 1.1. Title of the proposal/initiative
- 1.2. Policy area(s) concerned in the ABM/ABB structure
- 1.3. Nature of the proposal/initiative
- 1.4. Objective(s)
- 1.5. Grounds for the proposal/initiative
- 1.6. Duration and financial impact
- 1.7. Management mode(s) planned

2. MANAGEMENT MEASURES

- 2.1. Monitoring and reporting rules
- 2.2. Management and control system
- 2.3. Measures to prevent fraud and irregularities

3. ESTIMATED FINANCIAL IMPACT OF THE PROPOSAL/INITIATIVE

- 3.1. Heading(s) of the multiannual financial framework and expenditure budget line(s) affected
- 3.2. Estimated impact on expenditure
 - 3.2.1. *Summary of estimated impact on expenditure*
 - 3.2.2. *Estimated impact on operational appropriations*
 - 3.2.3. *Estimated impact on appropriations of an administrative nature*
 - 3.2.4. *Compatibility with the current multiannual financial framework*
 - 3.2.5. *Third-party contributions*
- 3.3. Estimated impact on revenue

LEGISLATIVE FINANCIAL STATEMENT

1. FRAMEWORK OF THE PROPOSAL/INITIATIVE

1.1. Title of the proposal/initiative

Proposal for a Regulation of the European Parliament and of the Council establishing, as part of the Integrated Border Management Fund, the instrument for financial support for customs control equipment

1.2. Policy area(s) concerned (*Programme cluster*)

11 Border Management
11.02 Integrated Border Management Fund
11.02.11 Customs Control Equipment Instrument

1.3. The proposal/initiative relates to:

☒ **a new action**

☐ **a new action following a pilot project/preparatory action**¹

☐ **the extension of an existing action**

☐ **a merger or redirection of one or more actions towards another/a new action**

1.4. Grounds for the proposal/initiative

1.4.1. Requirement(s) to be met in the short or long term including a detailed timeline for roll-out of the implementation of the initiative

The instrument will be implemented through an implementing act adopting a work programme. The adoption is planned for Q1 2021 after the assessment of needs (under the current Customs 2020 programme) and consultation of the Customs programme Committee. The execution of the work programme will be carried out through the conclusion of grant agreements with the beneficiaries starting in Q2 2021 at the latest.

1.4.2. Added value of Union involvement (it may result from different factors, e.g. coordination gains, legal certainty, greater effectiveness or complementarities). For the purposes of this point 'added value of Union involvement' is the value resulting from Union intervention which is additional to the value that would have been otherwise created by Member States alone.

Reasons for action at European level (ex-ante): Acknowledging the need to improve equivalence in the performance of customs controls throughout Member States to avoid the diversion of flows of goods towards the weakest points, the Commission thus proposes this new Instrument. Securing equivalent customs equipment and infrastructure is indeed an important part of addressing the current imbalance. This imbalance is partly due to differences in the capacities and resources available in Member States. Their ability to react to challenges generated by the constantly evolving global business models and supply chains depend not only on the human component but also on the availability of modern and reliable control equipment. The ever growing volumes of goods together with the increasing need for border control

¹ As referred to in Article 58(2)(a) or (b) of the Financial Regulation.

is underpinned not only by the traditional function of customs to collect revenue but also by the necessity to extensively reinforce the control of goods entering and exiting EU external borders to ensure safety and security. At the same time, these controls governing the movement of goods across the external borders should not impair but rather facilitate legitimate trade.

Expected generated Union added value (ex-post): Achieving this within the customs union can only be achieved by ensuring that even the weakest link is strong enough to fulfil its function. The Instrument will thus support the customs union and will complement primarily the actions of the Customs programme.

1.4.3. *Lessons learned from similar experiences in the past*

Not applicable

1.4.4. *Compatibility and possible synergy with other appropriate instruments*

The Instrument is closely linked with the new Customs programme, which will support the assessment of needs. In addition, it has links with the activities carried out by the European Anti-Fraud Office OLAF as regards combating fraud for the protection of Union financial interests in accordance with Art. 325 TFEU.

1.5. Duration and financial impact

☒ limited duration

- ☒ in effect from 01.01.2021 to 31.12.2027
- ☒ Financial impact from 2021 to 2027 for commitment appropriations and from 2021 to 2030 for payment appropriations.

☐ unlimited duration

- Implementation with a start-up period from YYYY to YYYY,
- followed by full-scale operation.

1.6. Management mode(s) planned²

☒ Direct management by the Commission

- ☒ by its departments, including by its staff in the Union delegations;
- ☐ by the executive agencies

☐ Shared management with the Member States

☐ Indirect management by entrusting budget implementation tasks to:

- ☐ third countries or the bodies they have designated;
- ☐ international organisations and their agencies (to be specified);
- ☐ the EIB and the European Investment Fund;
- ☐ bodies referred to in Articles 70 and 71 of the Financial Regulation;
- ☐ public law bodies;
- ☐ bodies governed by private law with a public service mission to the extent that they provide adequate financial guarantees;
- ☐ bodies governed by the private law of a Member State that are entrusted with the implementation of a public-private partnership and that provide adequate financial guarantees;
- ☐ persons entrusted with the implementation of specific actions in the CFSP pursuant to Title V of the TEU, and identified in the relevant basic act.
- *If more than one management mode is indicated, please provide details in the 'Comments' section.*

Comments

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²

Details of management modes and references to the Financial Regulation may be found on the BudgWeb site:
<https://myintracomm.ec.europa.eu/budgweb/EN/man/budgmanag/Pages/budgmanag.aspx>

2. MANAGEMENT MEASURES

2.1. Monitoring and reporting rules

Specify frequency and conditions.

An interim evaluation looking at the achievement of the objectives of the Instrument, its efficiency and its added value at Union level will be carried out once there is sufficient information available about the implementation of the Instrument, but no later than four years after the start of the implementation of the Instrument.

A final evaluation should deal with the long-term impact and the sustainability effects of the Instrument. It shall be carried out at the end of the implementation of the Instrument, but no later than four years after the end of the funding period.

Those evaluations should be based among others on the indicators established for monitoring and reporting.

2.2. Management and control system(s)

2.2.1. *Justification of the management mode(s), the funding implementation mechanism(s), the payment modalities and the control strategy proposed*

As regards the Customs Control Equipment component, the preferred option is direct management through the provision of grants to national authorities for the purchase, maintenance and evolution of customs control equipment.

The new EU intervention aims at addressing current imbalances between Member States and ensuring equivalence in the performance of customs controls throughout the Customs Union. Such an objective requires obviously coordination beyond national borders, which a centralised approach through direct management is best placed to deliver. As the national authorities – and not the Union – should continue to own directly the equipment they use for carrying out their duties at EU borders, EU intervention would take the form of grants to Member States supporting the purchase, maintenance and evolution of customs control equipment in accordance with predefined standards per border type.

Direct management is the delivery mechanism for existing actions in the customs field, whether under the Customs or Hercule III programmes. It is also an appropriate approach as, in the case at hand, it will only involve a limited number of beneficiaries, the 27 Member States, thereby allowing the application of several simplifications foreseen by the Financial Regulation and its rules for application, in particular the exceptions to calls for proposals.

In order to build thoroughly on the knowledge and operational experience of the national authorities and thereby meet their actual needs, direct management by the Commission will be supported by expert teams composed of Member States for preparatory tasks (e.g. assessment of needs and definition of standards of minimum equipment by border type). The final policy decision will be taken by the Commission, which will allocate the funds through grants based on customs policy priorities, threats and volumes under a comitology procedure.

Co-funding – i.e. national contributions on top of EU intervention – and ex-ante conditionalities – such as the demonstration of adequate administrative capacity in terms of e.g. staff number and skills – will be considered as well. This ensures that the provision of customs control equipment takes place only with the full

commitment of Member States and where conditions are met, thereby securing the actual use of equipment and a real impact for EU intervention.

For grants, pre-financing is envisaged but would be rather limited (around 20 % – to be defined in the work programmes) in the first year of the grant agreement as public procurement of customs control equipment by the customs authorities are usually lengthy procedures and will therefore usually expand beyond the first year of the grant agreement.

Final payments/recoveries for grants are done on the basis of financial reports combined with ex-post on-the-spot audits.

As this Instrument is a new programme, the control strategy will most probably need to be fine-tuned over time in view of its initial outcomes. Concretely, it will build on a dual approach:

- the national financial reports are closed after a desk review followed by the final payment/recovery order (therefore reducing the payment delays); these payment/recovery orders remain verified by the ex-ante controls embedded in the financial circuits;
- the above controls are underpinned by ex-post on-the-spot audits in the Member States; DG TAXUD targets on-the-spot audit missions in about half of the Member States every year.

2.2.2. *Information concerning the risks identified and the internal control system(s) set up to mitigate them*

The risks associated to the financial transactions implementing the Instrument are limited, in particular since :

- the beneficiaries are the customs administrations of Member States – in such case there are no calls for proposals;
- as funding will focus in the work programme on specifically identified and joint priorities further to the assessment of needs, most actions will be comparable across Member States and deviations will be visible and easily identifiable;
- the use of an electronic system for recording the actions and compiling financial reports will be obligatory – this system embeds various controls and will ease the monitoring of expenditure;
- funding is expected to focus mainly on expensive pieces of customs control equipment, which will reduce the number of individual pieces purchased, maintained or upgraded and thereby facilitate monitoring and control;
- minimal reporting obligations are already foreseen in the proposal and will be complemented in the work programmes and the grant agreements to limit or mitigate possible risks.

2.2.3.

2.2.4. *Estimation and justification of the cost-effectiveness of the controls (ratio of "control costs ÷ value of the related funds managed"), and assessment of the expected levels of risk of error (at payment & at closure)*

The total annual cost of controls under the former Customs programme is expected to remain rather limited in view of the limited risk of error, as indicated above,

considering the nature and implementation method of the related financial transactions.

The global internal control system, based on ex-ante controls embedded in the financial circuits, aims to remove potential errors prior to the payment/closure. The ex-post on-the-spot controls for grants further reduce the potential risk of error at payment/closure due to their strong deterring effect.

As a point of comparison, the applied control strategy has proven to be effective and efficient under the former Customs programme and the cost of control has shown to be limited. Considering that the same control systems will be used for this new Instrument, the anticipated cost of controls and expected level of risk of error at payment/closure under the new Instrument are expected to be similar.

2.3. Measures to prevent fraud and irregularities

Specify existing or envisaged prevention and protection measures, e.g. from the Anti-Fraud Strategy.

DG TAXUD's anti-fraud strategy (AFS) focusses on developing a strong anti-fraud culture within the DG through awareness raising activities on potential fraud risks and ethical behaviour among DG TAXUD staff. The strategy furthermore addresses an active cooperation with OLAF and the integration of fraud aspects into the Strategic Planning and Programming (SPP) cycle of the DG.

3. ESTIMATED FINANCIAL IMPACT OF THE PROPOSAL/INITIATIVE

3.1. Heading of the multiannual financial framework and new expenditure budget line(s) proposed

Heading of multiannual financial framework	Budget line	Type of expenditure	Contribution			
	Number	Diff./Non-diff. ¹	from EFTA countries ²	from candidate countries ³	from third countries	within the meaning of Article [21(2)(b)] of the Financial Regulation
4	11.01.02 Support expenditure for the Customs Control Equipment Instrument	Non-Diff.	NO	NO	NO	NO
4	11.02.11 Customs Control Equipment Instrument	Diff.	NO	NO	NO	NO

¹ Diff. = Differentiated appropriations / Non-diff. = Non-differentiated appropriations.

² EFTA: European Free Trade Association.

³ Candidate countries and, where applicable, potential candidates from the Western Balkans.

3.2. Estimated impact on expenditure

3.2.1. Summary of estimated impact on expenditure

EUR million (to three decimal places)

Heading of multiannual financial framework			4	‘Migration and Border Management’							
			2021	2022	2023	2024	2025	2026	2027	Post 2027	TOTAL
Operational appropriations 11.02.11	Commitments	(1)	174.903	178.403	181.973	185.614	189.329	193.117	195.961		1.299.300
	Payments ¹	(2)	42.481	129.274	162.474	170.688	175.066	178.602	182.209	258.506	1.299.300
Appropriations of an administrative nature financed from the envelope of the instrument ^{2,3} 11.01.02	Commitments = Payments	(3)	0.100	0.100	0.100	0.100	0.100	0.100	0.100		0.700
TOTAL appropriations for the envelope of the instrument	Commitments	=1+3	175.003	178.503	182.073	185.714	189.429	193.217	196.061		1 300.000
	Payments	=2+3	42.581	129.374	162.574	170.788	175.166	178.702	182.309	258.506	1.300.000

¹ The payments profile for this new programme under the 2021-2027 MFF builds on extrapolation of the historical payment profiles for the period 2007-2017 of programmes with similar delivery mechanisms in comparable policy areas, in particular customs, taxation and anti-fraud.

² Technical and/or administrative assistance and expenditure in support of the implementation of EU programmes and/or actions (former ‘BA’ lines), indirect research, direct research.

³ Examples: translations, IT networks and systems for administering the instrument (ABAC, eGrants, AGM...)

Heading of multiannual financial framework	7	‘Administrative expenditure’
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EUR million (to three decimal places)

		2021	2022	2023	2024	2025	2026	2027	Post 2027	TOTAL
Human resources		3.575	3.575	3.575	3.575	3.575	3.575	3.575		25.025
Other administrative expenditure		0.100	0.100	0.100	0.100	0.100	0.100	0.100		0.700
TOTAL appropriations under HEADING 7 of the multiannual financial framework	(Total commitments = Total payments)	3.675	3.675	3.675	3.675	3.675	3.675	3.675		25.725

EUR million (to three decimal places)

		2021	2022	2023	2024	2025	2026	2027	Post 2027	TOTAL
TOTAL appropriations across HEADINGS of the multiannual financial framework	Commitments	178.678	182.178	185.748	189.389	193.104	196.892	199.736		1325.725
	Payments	46.256	133.049	166.249	174.463	178.841	182.377	185.984	258.506	1325.725

3.2.2. Summary of estimated impact on appropriations of an administrative nature

- ☐ The proposal/initiative does not require the use of appropriations of an administrative nature
- ☒ The proposal/initiative requires the use of appropriations of an administrative nature, as explained below:

EUR million (to three decimal places)

Years	2021	2022	2023	2024	2025	2026	2027	TOTAL
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HEADING 7 of the multiannual financial framework								
Human resources	3.575	3.575	3.575	3.575	3.575	3.575	3.575	25.025
Other administrative expenditure	0.100	0.100	0.100	0.100	0.100	0.100	0.100	0.700
Subtotal HEADING 7 of the multiannual financial framework	3.675	3.675	3.675	3.675	3.675	3.675	3.675	25.725

Outside HEADING 7¹ of the multiannual financial framework								
Human resources								
Other expenditure of an administrative nature	0.100	0.100	0.100	0.100	0.100	0.100	0.100	0.700
Subtotal outside HEADING 7 of the multiannual financial framework	0.100	0.100	0.100	0.100	0.100	0.100	0.100	0.700

TOTAL	3.775	3.775	3.775	3.775	3.775	3.775	3.775	26.425
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The appropriations required for human resources and other expenditure of an administrative nature will be met by appropriations from the DG that are already assigned to management of the action and/or have been redeployed within the DG, together if necessary with any additional allocation which may be granted to the managing DG under the annual allocation procedure and in the light of budgetary constraints.

¹ Technical and/or administrative assistance and expenditure in support of the implementation of EU programmes and/or actions (former 'BA' lines), indirect research, direct research.

3.2.2.1. Estimated requirements of human resources

- ☐ The proposal/initiative does not require the use of human resources.
- ☒ The proposal/initiative requires the use of human resources, as explained below:

Estimate to be expressed in full time equivalent units

Years	2021	2022	2023	2024	2025	2026	2027
• Establishment plan posts (officials and temporary staff)							
Headquarters and Commission's Representation Offices	25	25	25	25	25	25	25
Delegations							
Research							
• External staff (in Full Time Equivalent unit: FTE) - AC, AL, END, INT and JED ¹							
Heading 7							
Financed from HEADING 7 of the multiannual financial framework	- at Headquarters						
	- in Delegations						
Financed from the envelope of the instrument ²	- at Headquarters						
	- in Delegations						
Research							
Other (specify)							
TOTAL	25	25	25	25	25	25	25

The human resources required will be met by staff from the DG who are already assigned to management of the action and/or have been redeployed within the DG, together if necessary with any additional allocation which may be granted to the managing DG under the annual allocation procedure and in the light of budgetary constraints.

Description of tasks to be carried out:

Officials and temporary staff	Additional staff will be needed to manage the Instrument and its implementation. This will include a.o. the following tasks: - Involvement, supervision and coordination of the assessment of needs: inventory, typology & standard, gap analysis and estimation of necessary funds for all types of borders (land, sea, air, postal hubs); - Programming: horizontal coordination (in particular, the assessment of threats and volumes), preparation of work programme and related procedures (comitology) and preparation and negotiation of grant agreements; - Implementation: monitor and support (e.g. joint procurement) implementation by customs authorities; - Reporting & Control/Audit
External staff	Not applicable

¹ AC= Contract Staff; AL = Local Staff; END = Seconded National Expert; INT = agency staff; JPD= Junior Professionals in Delegations.

² Sub-ceiling for external staff covered by operational appropriations (former 'BA' lines).

3.2.3. Third-party contributions

The proposal/initiative:

- ☒ does not provide for co-financing by third parties
- ☐ provides for the co-financing by third parties estimated below:

Appropriations in EUR million (to three decimal places)

Years	2021	2022	2023	2024	2025	2026	2027	TOTAL
Specify the co-financing body								
TOTAL appropriations co-financed								

3.3. Estimated impact on revenue

- ☐ The proposal/initiative has no financial impact on revenue.
- ☒ The proposal/initiative has the following financial impact:
 - ☒ on own resources
 - ☐ on other revenue

please indicate, if the revenue is assigned to expenditure lines ☐

EUR million (to three decimal places)

Budget revenue line:	Impact of the proposal/initiative ¹						
	2021	2022	2023	2024	2025	2026	2027
Article							

For assigned revenue, specify the budget expenditure line(s) affected.

Not applicable

Other remarks (e.g. method/formula used for calculating the impact on revenue or any other information).

The Instrument will indirectly impact the Union's Traditional Own Resources as more efficient customs controls are expected to lead to an increase in customs duties. Such effect is however not quantifiable.

¹ As regards traditional own resources (customs duties, sugar levies), the amounts indicated must be net amounts, i.e. gross amounts after deduction of collection costs.