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To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
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Subject:	COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT pursuant to Article 294(6) of the Treaty on the Functioning of the European Union concerning the position of the Council on the adoption of a Regulation of the European Parliament and of the Council establishing, as part of the Integrated Border Management Fund, the Instrument for Financial Support for Border Management and Visa Policy

Delegations will find attached document COM(2021) 331 final.

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EUROPEAN
COMMISSION

Brussels, 21.6.2021
COM(2021) 331 final

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TO THE EUROPEAN PARLIAMENT**

pursuant to Article 294(6) of the Treaty on the Functioning of the European Union

concerning the

**position of the Council on the adoption of a Regulation of the European Parliament and
of the Council establishing, as part of the Integrated Border Management Fund, the
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1. BACKGROUND

Date of transmission of the proposal to the European Parliament and to the Council
(document COM(2018) 473 final – 2018/0249 COD): 12 June 2018

Date of the opinion of the European Economic and Social Committee: 17 October 2018

Date of the position of the European Parliament, first reading: 13 March 2019

Date of adoption of the partial general approach of the Council: 7 June 2019

Date of adoption of the general approach of the Council: 12 October 2020

Date of the trilogue where provisional agreement was reached: 10 December 2020

Date of the adoption of the position of the Council: 14 June 2021

2. OBJECTIVE OF THE PROPOSAL FROM THE COMMISSION

This proposal forms part of the post-2020 Multiannual Financial Framework (MFF) package that the Commission put forward in May 2018. Common measures on the crossing of internal borders by persons, on border controls at external borders and the common visa policy ensure the achievement of the Union's aim of free movement within an area of freedom, security and justice.

In that light, the Commission proposed to establish the successor fund of the 2014-2020 Internal Security Fund by setting up a Border Management and Visa Instrument (BMVI) as part of the Integrated Border Management Fund (IBMF). The other part of the IBMF consists of a Customs Control Equipment Instrument (CCEI). The Commission proposal on the Customs Control Equipment Instrument was intended to recognise the role of customs authorities in protecting all our borders (sea, air, land and postal hubs), while facilitating trade and shielding citizens from dangerous and fake goods.

The creation of a dedicated integrated border management fund is a reflection of the fact that both border management and internal security are priorities each worthy of dedicated and more targeted Union financing instruments.

The effective protection of the EU's external borders is crucial to manage the challenges ahead and ensure the internal security. This is also essential in order to maintain a Schengen area without internal border controls.

Over the past few years, a number of measures have been introduced to address the immediate challenges and to put in place all the important building blocks needed to ensure strong and smart borders.

The BMVI will support these ongoing efforts and further increase support to securing our external borders, focusing on:

- (a) more support to Member States in securing the EU's external borders;
- (b) ensuring large-scale IT systems used for border management are robust and can function seamlessly with one another and with national systems;
- (c) ensuring the EU's common visa policy adapts to evolving security concerns, challenges linked to migration and new opportunities offered by technological developments.

Funding support should continue to be provided to Member States to build and enhance their capacities in these areas and to reinforce cooperation, including with the relevant Union agencies. Moreover, it will help to ensure a similar level of protection of the borders, by addressing the current differences between the Member States due to geographical location and differences in capacities and resources available.

The BMVI will offer greater flexibility compared with the previous programming period, while at the same time ensuring that funding is steered towards Union priorities and actions with a significant Union added value. New mechanisms for the allocation of funding for shared, direct and indirect management will address new challenges and priorities. This includes a so-called thematic facility, which offers different options with respect to modes of implementation over the programming period.

3. COMMENTS ON THE POSITION OF THE COUNCIL

The position of the Council as adopted in the first reading fully reflects the agreement reached in the trilogue between the European Parliament, the Council, and the Commission, as concluded on 10 December 2020. The main points of this agreement were:

Budget: The financial envelopes were aligned with the amounts agreed for the 2021-2027 MFF. EUR 6.2 billion in current prices under the Integrated Border Management Fund are split between the BMVI with EUR 5.2 billion and the CCEI with EUR 1.0 billion. Moreover, BMVI will benefit from an additional allocation of EUR 1 billion in 2018 prices, resulting from the Programme-specific adjustment provided for in Article 5 and Annex II of the Council Regulation (EU, Euratom) 2020/2093 (i.e. MFF regulation). This additional EUR 1 billion, in 2018 prices, will be allocated in full (100%) to the thematic facility. Moreover, the Commission's proposal on the conditionality for receiving additional funding at the mid-term

review phase was retained. As proposed, a Member State must submit payment applications covering at least 10% of the initial allocation for its programme to be eligible to receive an additional allocation for its programme in the mid-term review.

Minimum funding percentage: A minimum threshold of 10% of the resources to the Member State programmes will be allocated to the specific objective supporting the common visa policy to ensure a harmonised approach with regard to the issuance of visas and facilitate legitimate travel, while helping to prevent migratory and security risks, subject to the possibility of Member States to deviate in duly justified cases.

Scope of support: The eligible actions listed in Annex III (Scope of Support) of the BMVI were agreed to be managed as follows:

- (a) Annex III remains a non-exhaustive list of actions ('open list') for the purposes of the programmes drawn up by Member States;
- (b) Annex III, with the exception of emergency assistance, becomes an exhaustive list of actions ('closed list') for the purposes of the thematic facility's work programmes. The Commission can add actions to Annex III by means of a delegated act.

Third countries and the external dimension of the Fund: Agreement was reached on the basis of the following:

- (a) Further safeguards included for actions in and in relation to third countries (e.g. Member State projects in or in relation to third countries need prior approval of the Commission, and eligible entities established in third countries may only receive funding if they are part of a consortium with at least one entity established in a Member State);
- (b) Provisions included to highlight the internal nature of the Fund and that, while actions in or in relation to third countries remain possible, the programmes must primarily serve internal Union policy.

Adoption procedures for implementing acts: It was agreed that the work programmes of the thematic facility would be adopted by implementing acts under the examination procedure (with the 'no opinion clause'). The faster procedure of directly applicable implementing acts was included for emergency assistance. The adoption of the template for the annual performance report will be adopted through an implementing act subject to the advisory procedure.

Multi-purpose equipment: The agreement extends the scope of multipurpose use of equipment and ICT systems. They may be used not only for customs control and for maritime operations of multipurpose character but also for achieving the objectives of the other two Home Affairs Funds, notably of the Internal Security Fund and of the Asylum, Migration and Integration Fund, as long as the primary purpose of those equipment (maximum 30% of the total period of use) and ICT systems are in accordance with the Regulation and double-financing is avoided.

Operating equipment: It was agreed that Member States would be responsible for ensuring compliance with the standards established by the European Border and Coast Guard Agency, without however requesting approval from the Agency.

Search and rescue: The BMVI will provide support for search and rescue operations performed in situations which may arise during border surveillance operations at sea.

Operating support: The percentage of the BMVI allocation which may go to operating support was increased to 33 % (from 30 % in the Commission proposal).

Visas: It was agreed that assistance is eligible for the issuance of visas with limited territorial validity on humanitarian grounds, for reasons of national interest or because of international obligations in line with the Union acquis on visas.

Financing of large-scale IT systems: It was agreed to have a closed list of eligible ICT-systems and large-scale IT-systems that may receive a higher co-financing rate of 90%.

Blending: Article 19 that provided for the possibility of blending operations was deleted.

International organisations: New provisions on the audit and control of international organisation were integrated.

Performance indicators: Result and output indicators in Annexes V and VIII were streamlined.

Retroactivity: Retroactivity provisions were included to take into account that the act would not be adopted before the end of 2020.

Overall, the agreement reached among the co-legislators preserves the objectives of the Commission's original proposal, although the agreed position offers slightly less flexibility and less simplification than what was initially proposed. The agreement maintains the same level of ambition as the initial proposal and provides a workable legal base for the implementation of the Instrument's objectives.

The Commission signalled in the political trilogues concluded on 10 December 2020 that it could accept elements agreed between the European Parliament and the Council for the purpose of a final agreement.

4. CONCLUSION

The Commission accepts the position taken by the Council.