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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 establishing the Instrument for financial support for customs control equipment

Delegations will find attached document COM(2021) 256 final.

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**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 establishing the Instrument for
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1. BACKGROUND

Date of transmission of the proposal to the European Parliament and to the Council (document COM(2018) 474 final – 2018/0258 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: 15 January 2019

Date of transmission of the amended proposal: N/A

Date of adoption of the position of the Council: 27 May 2021

2. OBJECTIVE OF THE PROPOSAL FROM THE COMMISSION

On 2 May 2018, the Commission adopted a proposal to set up a new Integrated Border Management Fund (IBMF) in the context of the Multiannual Financial Framework (MFF) for 2021-2027.

The IBMF 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, to facilitate legitimate travel and trade as well as to improve the performance of the customs union.

To that extent, the 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 Communication concerns the Customs Control Equipment instrument (CCEI), which pursues 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 EU and to protect it from illegal trade while facilitating legitimate business activity. The Instrument has the specific objective of contributing to adequate and equivalent levels of results of customs controls through the transparent purchase, maintenance

and upgrade of relevant, state-of-the-art, and reliable customs control equipment that should also be secure, safe, and environmental-friendly.

The instrument will also cover equipment used for control purposes beyond customs controls as long as the latter remains the main purpose of use of that equipment.

The programme has been designed to address existing imbalances in terms of availability of adequate and modern customs control equipment in the Member States, taking into account the specificities of different border crossing points, in particular, their geographical location, size, traffic characteristics, risk analyses, and threats they are exposed to.

It comes as a response to the calls by the Member States for a structured solution to provide national customs administrations with adequate and effective technical equipment for controlling goods entering and leaving the EU.

The availability of such equipment at the external borders and at customs laboratories is of paramount importance for facilitating the customs union to face existing challenges as well as emerging new ones.

By supporting the modernisation of the customs control equipment at union level, the CCEI pursues policy goals oriented towards a stronger and better equipped customs union, enhanced EU added-value, and improved innovation and sustainability of the EU action.

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 trilogues.

The main points of the overall agreement include the following:

- Inclusion of wording on “equivalent results of customs controls” in some recitals (1, 2, 5, 6, 19, 26¹).
- Inclusion of a recital on climate change and biodiversity (recital 10(a)) and a recital on budget conditionality (recital 24).
- Specification that work programmes should in principle cover more than one budgetary year, but not more than three years (recital 17).
- Inclusion in the Commission interim and final evaluations of details on the sharing between customs and other border authorities of the equipment financed under the Instrument, to the extent that relevant information has been provided by the Member States to the Commission. Inclusion of a reference to annual progress reports to be prepared by the Commission in addition to the interim and final evaluations of the instrument, as part of the performance reporting system (Recital 21).
- The duration of the instrument is from 1 January 2021 until 31 December 2027 (Article 1(1)). The same duration is set for the Integrated Border Management Fund,

¹ The numbers of the recitals and articles mentioned refer to the agreed text of the draft Regulation prior to the linguistic revision.

of which the Instrument for financial support for customs control equipment is one part (Article 1(2)).

- Compromise formulation of the instrument’s objectives with the inclusion of the wording “with a view to the long-term aim of harmonised application of customs controls by the Member States” (Article 3(1)).
- Clarification of the specific objective of the instrument of contributing to adequate and equivalent results of customs controls through the transparent purchase, maintenance and upgrade of relevant, state-of-the-art, such as secure, safe and environmental-friendly, and reliable customs control equipment, thereby supporting the customs authorities acting as one to protect the interests of the Union (Article 3(2)).
- The financial envelope for the implementation of the instrument amount to EUR 1 006 407 000 in current prices (Article 4(1)).
- Specification that an eligible action can support the purchase, maintenance and upgrade of innovative detection technology equipment (article 6(1)).
- The retroactive application of the programme as of 1 January 2021 (Article 6(2)a).
- Clarification that customs control equipment financed under this Instrument should be used primarily for customs controls, but may also be used for additional purposes, including for control of persons in support of the national border management authorities and investigation. However, the act of sharing should not be systematic (Article 6(4)).
- Introduction of the requirement for the Commission to encourage joint procurement and testing of customs control equipment between Member States (Article 6(4)(a)).
- Some changes to the list of costs that should not be eligible for funding under the instrument and related exceptions (Article 9(1)).
- Adoption of the work programmes by implementing acts but with the addition of a number of elements which are laid down in the Regulation. Most of these elements are already mandatory according to the Regulation (EU, Euratom) No 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union (Article 11(1)(a)).
- Some changes to the elements of the customs equipment needs assessment, which will support the preparation of the work programmes (notably a comprehensive description of available customs control equipment; a common list of customs control equipment that should be available, by reference to the category of border crossing points and an estimate of financial needs) (Article 11(3)).
- Reinforcement of the reporting requirements including the annual communication to the Commission of the information related to costs exceeding EUR 10 000, which has been completed by a detailed list of the customs control equipment financed under the Instrument and the results of the use of the equipment, supported with the relevant statistics where appropriate (Article 12(4)).

- A report to be drafted by the Commission in respect of the delegation of power conferred on the Commission to amend Annex 1 (on the indicative list of equipment) and Annex 2 (on indicators) (Article 14(2)).
- Entry into force of the Regulation on the day of its publication in the Official Journal of the European Union (Article 18(1)).
- Completion of Annex 1 on the list of equipment.

The Commission supports the agreement reached at the trilogues, which paves the way for a swift adoption of the new Instrument. The CCEI would reinforce the efforts and capacities of the customs authorities acting as one to protect the single market and to raise the customs union to the next level.

The Commission maintains its concerns with regard to recital 22 where the wording ‘fully transparent’ was added by the European Parliament with reference to the appropriate consultations that the Commission is to carry out during its preparatory work for adopting delegated acts. The request of the Commission to delete this wording, as it deviates from the standard clauses agreed between the three institutions in the Interinstitutional Agreement on Better Law-Making and the Common Understanding attached to it, was rejected by the co-legislators. The Commission is therefore making a statement on that subject to accompany the final adoption of the Regulation, as set out in point 5 below.

4. CONCLUSION

The Commission accepts the position taken by the Council, which fully reflects the results of the inter-institutional negotiations.

5. ANNEX: STATEMENT BY THE COMMISSION

“The Commission regrets that the legislator departed in recital 22 from the standard recital agreed in the Interinstitutional Agreement on Better Law-Making. The Commission underlines that the principles agreed in the Common Understanding annexed to this Interinstitutional Agreement already ensure full transparency. The Commission will prepare any delegated acts under this Regulation in line with these agreed principles. The addition to the standard recital should not create a precedent for other cases.”