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#### NOTE

From:	General Secretariat of the Council
To:	Permanent Representatives Committee
No. Cion doc.:	10151/18
Subject:	Proposal for a Regulation of the European Parliament and of the Council establishing, as part of the Integrated Border Management Fund, the instrument for financial support for border management and visa - Analysis of the final compromise text with a view to agreement

1. On 13 June 2018, the Commission put forward a proposal for a Regulation of the European Parliament and of the Council establishing, as part of the Integrated Border Management Fund, the instrument for financial support for border management and visa<sup>1</sup> (hereafter 'BMVI' or 'the Instrument') under Heading 4 (Migration and Border Management) of the Multiannual Financial Framework (MFF) 2021-2027.

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<sup>1</sup> 10151/18 + ADD 1, ADD 1 COR 1

2. The BMVI is one of the two instruments of the new Integrated Border Management Fund, the other one being the instrument for financial support for customs control equipment. The objective of the Instrument is to ensure strong and effective European integrated border management at the external borders while safeguarding the free movement of persons within it, in full compliance with the Union's commitments on fundamental rights, thereby contributing to guaranteeing a high level of security in the Union. More concretely, the Instrument will contribute to: (i) facilitating legitimate border crossings, preventing and detecting illegal immigration and cross-border crime and managing migration flows; (ii) supporting the common visa policy to facilitate legitimate travel.
3. In the European Parliament, the file was assigned to the Civil Liberties, Justice and Home Affairs (LIBE) Committee with Tanja Fajon (S&D, SI) as rapporteur. Following the preparatory work by the Committee, the European Parliament adopted its first-reading position<sup>2</sup> at its plenary session on 13 March 2019.
4. The European Economic and Social Committee adopted an opinion at its plenary session on 17 October 2018<sup>3</sup>.
5. The Committee of the Regions did not deliver an opinion on this Instrument.
6. On 7 June 2019, the Council adopted a partial general approach<sup>4</sup> which served as an initial mandate for negotiations with the European Parliament. On 12 October 2020, the Council adopted a full general approach<sup>5</sup> on the abovementioned proposal.

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<sup>2</sup> 7403/19  
<sup>3</sup> 13606/18  
<sup>4</sup> 10141/19  
<sup>5</sup> 11943/20

7. The co-legislators engaged in negotiations in the second half of 2019. Work continued at technical level in the first half of 2020, although the organisation of meetings was curtailed in the aftermath of the Covid-19 pandemic. In all, five trilogues were organised: on 26 September and 5 November 2019 and on 28 October, 26 November and 10 December 2020. At the trilogue on 10 December 2020, the co-legislators secured a provisional agreement, which was presented at the meeting of the Permanent Representatives Committee on 16 December 2020<sup>6</sup>. At the meeting, the text submitted by the Presidency gathered the necessary support from delegations.
8. Work continued in 2021 in order to finalise work on recitals, terminology, retroactivity provisions and indicators. In total, preparatory work at technical level was carried out in 23 tripartite meetings. In addition, seven meetings dealing with horizontal provisions were organised, in order to cover parts of the proposal that were shared with the other two Home Affairs instruments: the Asylum, Migration and Integration Fund (AMIF) and the Internal Security Fund (ISF). Coordination and synchronisation with other pieces of legislation being negotiated at the same time, and in particular with the Common Provisions Regulation and the MFF package, was also ensured.

## **II. ANALYSIS OF THE FINAL COMPROMISE TEXT WITH A VIEW TO AN AGREEMENT**

9. The key elements of this final compromise text build on the provisional agreement presented to the members of the Permanent Representatives Committee on 16 December 2020. They can be summarised as follows:
- Actions in or in relation to third countries. The proposed caps to limit the funding of actions in, or in relation to third countries in both programmes and in the thematic facility were dropped, thereby providing the new Instrument with the level of flexibility needed for actions that support its objectives, whether these are carried out inside or outside the Union's borders.

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<sup>6</sup> 13863/20

- Use of multipurpose equipment. The assets purchased with a financial contribution from the Instrument will be used, subject to some limitations, in other areas, including for customs, for maritime operations or for achieving the objectives of the two other Home Affairs funds (the AMIF and the ISF). The new provisions will enhance simplification, flexibility, cost-effectiveness and cooperation and coordination between national authorities.
- Budget top-up. The co-legislators agreed on an additional allocation of a maximum amount of EUR 1 billion in 2018 prices to be allocated to the thematic facility in accordance with Article 5 and Annex II of the MFF Regulation.
- Operating support. The maximum percentage for operating support was increased to 33% of the amount allocated to the programme. Costs related to training activities and real estate are covered for both objectives, borders and visa.
- Level of expenditure for visa policy. The binding percentage proposed for the thematic facility was dropped. 10% of the funding will be allocated to the visa objective for programmes. A safeguard will allow Member States to depart from this minimum percentage provided that an explanation is included in the programme.
- Interoperability of IT systems and communication networks. These actions were considered as a priority and their co-financing rates were increased.
- Delegated acts versus implementing acts. The Commission's work programmes will be adopted by implementing acts (examination procedure). Annex III (scope of support) will be adopted by means of a delegated act.
- Provisions on fundamental rights. The references to fundamental rights proposed by the EP were streamlined across the legal act.

### III. CONCLUSION

10. The European Parliament's Committee on Civil Liberties, Justice and Home Affairs (LIBE) is expected to vote on 1 March 2021, following which the LIBE Chair will transmit a letter to the Presidency confirming that, should the Council approve this text in first reading, after legal-linguistic revision, the Parliament would approve the Council's position in its second reading.
  11. Subject to the receipt of the letter from the LIBE Chair, and without prejudice to further linguistic revisions, the Committee is invited to analyse the complete consolidated text of the provisional agreement, as set out in the Annex<sup>7</sup> to this note, with a view to reach an early second reading agreement with the European Parliament.
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<sup>7</sup> Changes compared to the initial Commission proposal (10151/18 + ADD 1) are marked as follows: text deleted appears in ~~strike through~~; new text proposed in **bold underlined**.

Proposal for a

**REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**establishing, as part of the Integrated Border Management Fund, the instrument for financial support for border management and visa**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Articles 77(2) and 79(2)(d) thereof

Having regard to the proposal from the European Commission,

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

Having regard to the opinion of the European Economic and Social Committee<sup>8</sup>,

Having regard to the opinion of the Committee of the Regions<sup>9</sup>,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) ~~In the context of evolving migratory challenges in the European Union, as well as security concerns, preserving the careful balance between free movement of persons on the one hand, and security on the other is of utmost importance.~~ The Union's objective of ensuring a high level of security within an area of freedom, security and justice pursuant to Article 67(3) of the Treaty on the Functioning of the European Union (TFEU) should be achieved, among others, through common measures on the crossing of internal borders by persons and on border controls at external borders and the common visa policy-, **while preserving the careful balance between free movement of persons on the one hand and security on the other.**

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<sup>8</sup> OJ C [...], [...], p. [...].

<sup>9</sup> OJ C [...], [...], p. [...].

- (2) Pursuant to Article 80 TFEU, these policies and their implementation should be governed by the principle of solidarity and fair sharing of responsibility, including its financial implications, between the Member States.
- (3) In the Rome Declaration signed on 25 ~~September~~ **March** 2017, leaders of 27 Member States affirmed their ~~determination~~ **commitment** to **work towards** a safe and secure Europe and to build a Union where all citizens feel safe and can move freely, where the external borders are secured, with an efficient, responsible and sustainable migration policy, respecting international norms, as well as a Europe determined to fight terrorism and organised crime.
- (4) **All actions funded under this instrument, including those carried out in third countries, should be implemented in full compliance with the rights and principles enshrined in the Union acquis, the Charter of Fundamental Rights of the European Union, and should be in line with the international obligations of the Union and the Member States arising from international instruments to which they are party, in particular by ensuring compliance with the principles of non-discrimination and non-refoulement.**
- (45) The **policy** objective of the ~~Union's policy in the field of external border management~~ **Instrument** is to develop and implement **a strong and effective** European integrated border management at ~~national and Union~~ **the external borders, thereby contributing to ensuring a high level, which is a precondition for of internal security within the Union, while safeguarding** the free movement of persons within ~~the Union~~ **it**, and is a fundamental component **fully respecting the relevant Union acquis and the international obligations of an area of freedom, security and justice. the Union and the Member States arising from international instruments to which they are party.**

- (56) European integrated border management, as implemented by the European Border and Coast Guard, established by Regulation (EU) 2016/1624 of the European Parliament and of the Council<sup>10</sup>, composed 2019/1896<sup>11</sup>, **is a shared responsibility** of the European Border and Coast Guard Agency and of the national authorities responsible for border management, including coast guards to the extent that they carry out border control tasks, ~~is necessary for improving migration management and security.~~ **It should contribute to facilitate legitimate border crossings, to prevent and detect illegal immigration and cross-border crime and to effectively manage migratory flows.**
- (67) Facilitating legitimate travel, while preventing irregular migration and security risks, was identified as one the main objectives of the Union's ~~response to the challenges in these areas~~**approach presented** in the Commission's Communication on ~~A European Agenda~~**New Pact on Migration and Asylum**<sup>12</sup>.
- (7) — ~~The European Council of 15 December 2016~~<sup>13</sup> ~~called for continued delivery on the interoperability of EU information systems and databases. The European Council of 23 June 2017~~<sup>14</sup> ~~underlined the need to improve interoperability between databases and on 12 December 2017 the Commission adopted a proposal for a Regulation on establishing a framework for interoperability between EU information systems~~<sup>15</sup>.
- (8) — ~~To preserve the integrity of the Schengen area and to strengthen its functioning, Member States have, since 6 April 2017, been obliged to carry out systematic checks against relevant databases on EU citizens who are crossing the EU's external borders. Furthermore, the Commission issued a Recommendation to Member States to make better use of police checks and cross-border cooperation.~~

<sup>10</sup> — 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).

<sup>11</sup> **Regulation (EU) 2019/1896 of the European Parliament and of the Council of 13 November 2019 on the European Border and Coast Guard and repealing Regulations (EU) No 1052/2013 and (EU) 2016/1624 (OJ L 295/1, 14.11.2019, p.1)**

<sup>12</sup> COM(2015) 240 final of 13 May 2015. **COM(2020) 609 final of 23.09.2020**

<sup>13</sup> — <http://www.consilium.europa.eu/en/press/press-releases/2016/12/15/euco-conclusions-final/>

<sup>14</sup> — [European Council conclusions](#), 22-23 June 2017.

<sup>15</sup> — COM(2017) 794 final.



- (98) Financial support from the Union budget is indispensable ~~to~~**for** the implementation of European integrated border management to support Member States in managing the crossing of the external borders efficiently and in addressing migratory **future** challenges ~~and potential future threats~~ at those borders, thereby contributing to addressing serious crime with a cross-border dimension while acting in full respect of fundamental rights.
- (109) To promote the implementation of the European integrated border management defined by its components in accordance with Article ~~4~~**3** of Regulation (EU) ~~2016/1624~~**2019/1896**: border control, search and rescue during border surveillance, risk analysis, cooperation between Member States (supported and coordinated by the European Border and Coast Guard Agency), inter-agency cooperation (including the regular exchange of information), cooperation with third countries, technical and operational measures within the Schengen area related to border control and designed to address illegal immigration and to counter cross-border crime better, use of state-of-the-art technology, quality control and solidarity mechanisms, and to ensure that it becomes an operational reality, Member States should be provided with adequate Union financial support.
- (10) This instrument should also be able to provide the necessary support to Member States for the implementation of common minimum standards for external border surveillance, in line with the respective competences of the Member States, the European Border and Coast Guard Agency and the Commission.**
- (11) As 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 uniformity~~**it is important to foster inter agency cooperation as a component of European integrated border management in line with Article 3(e) of Regulation (EU) 2019/1896. Complementarity** in carrying out border control and customs control at the external borders needs to be ~~addressed~~**ensured** by providing adequate Union financial support to the Member States. This will not only strengthen customs controls **in order both to combat all forms of trafficking, but will** also facilitate legitimate trade, ~~contributing~~**and travel, and contribute** to a secure and efficient customs union.

- (12) It is therefore necessary to establish the successor fund of the 2014-2020 Internal Security Fund established by Regulation (EU) No 515/2014 of the European Parliament and of the Council<sup>16</sup>, **in part**, by setting up an Integrated Border Management Fund ('the Fund').
- (13) Due to the legal particularities applicable to Title V of the TFEU and the different applicable legal bases regarding the policies on external borders and on customs control, it is not legally possible to establish the Fund as a single instrument.
- (14) The Fund should therefore be established as a comprehensive framework for Union financial support in the field of border management and visa comprising the instrument for financial support for border management and visa ('the instrument') established by this Regulation as well as the instrument for financial support for customs control equipment established by Regulation (EU) No .../...<sup>17</sup> of the European Parliament and of the Council. The framework should be complemented by Regulation (EU) No .../... [Common Provisions Regulation] of the European Parliament and of the Council<sup>18</sup>, to which this Regulation should refer as regards rules on shared management.
- ~~(15) The instrument should be implemented in full compliance with the rights and principles enshrined in the Charter of Fundamental Rights of the European Union and with the Union's international obligations as regards fundamental rights.~~
- ~~(16)~~<sup>15</sup> The instrument should build on the results and investments ~~achieved with the support~~ of its predecessors: the External Borders Fund for the period 2007-2013 established by Decision No 574/2007/EC of the European Parliament and of the Council<sup>19</sup> and the instrument for external borders and visa as part of the Internal Security Fund for the period 2014-2020 established by Regulation (EU) No 515/2014<sup>20</sup>, and should extend it to take into account new developments.

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

<sup>17</sup> OJ L [...], [...], p.

<sup>18</sup> OJ L [...], [...], p.

<sup>19</sup> OJ L 144, 6.6.2007, p. 22.

<sup>20</sup> Regulation (EU) No 515/2014 of the European Parliament and of the Council of 16 April 2014 establishing, as part of the Internal Security Fund, the instrument for financial support for external borders and visa and repealing Decision No 574/2007/EC (OJ L 150, 20.5.2014, p. 143).

- (16) To ensure a uniform and high-quality external border control and to facilitate legitimate travel across the external borders, the instrument should contribute to the development of European integrated border management that includes all the measures involving policy, law, systematic cooperation, burden-sharing, assessment of the situation and changing circumstances regarding crossing points for irregular migrants, personnel, equipment and technology taken at different levels by the competent authorities of the Member States and by the European Border and Coast Guard Agency, acting in cooperation with other actors such as ~~third countries and~~ other EU bodies, in particular the European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice (eu-LISA), Europol and, **where appropriate, third countries and** international organisations.
- (17) The instrument should contribute to the improvement of the efficiency of visa processing in terms of **facilitating visa procedures for bona fide travellers and of** detecting and assessing security and irregular migration risks, ~~as well as facilitating visa procedures for bona fide travellers.~~ In particular, the instrument should deliver financial assistance to support digitalisation of visa processing with the objective to provide fast, secure and client-friendly visa procedures for the benefit of both visa applicants and consulates. The instrument should also serve to ensure wide consular coverage across the world. The uniform implementation **and the modernisation** of the common visa policy ~~and its modernisation~~ **as well as the measures stemming from the VIS Regulation** should also be covered by the instrument, **as should assistance to Member States for the issuance of visas, including visas with limited territorial validity issued on humanitarian grounds, for reasons of national interest or because of international obligations in line with the the Union acquis on visas.**
- (18) The instrument should support measures **linked to external border control** in the territory of the Schengen countries ~~that are linked to border control~~ as part of the development of a common integrated border management system, which strengthens the overall functioning of the Schengen area.

(2019) With a view to improving the management of the external borders, to ~~contribute~~**facilitating legitimate travel**, to ~~preventing~~**contributing to the prevention of** and combating irregular migration~~border crossing, to the implementation of the common visa policy~~ and to ~~contribute~~**contributing** to a high level of security within the area of freedom, security and justice of the Union, the instrument should support the development of large-scale IT systems,~~based on existing or new IT systems.~~ **pursuant to Union law in the area of border management.** It should also support the setting-up of interoperability<sup>21</sup> between those EU information systems (Entry-exit system (EES)<sup>22</sup>, the Visa Information System (VIS)<sup>23</sup>, the European Travel Information and Authorisation System (ETIAS)<sup>24</sup>, Eurodac<sup>25</sup>, the Schengen Information System (SIS)<sup>26</sup> and the European Criminal Records Information System for third-country nationals (ECRIS-TCN))<sup>27</sup> in the Member States, in order for these EU information systems and their data to supplement each other. The instrument should also contribute to the necessary developments at national level following the implementation of the interoperability components at central level (European search portal (ESP), a shared biometric matching service (shared BMS), a common identity repository (CIR) and a multiple-identity detector (MID))<sup>28</sup>.

<sup>21</sup> **Regulation (EU) 2019/817 of the European Parliament and of the Council of 20 May 2019 on establishing a framework for interoperability between EU information systems in the field of borders and visa and amending Regulations (EC) No 767/2008, (EU) 2016/399, (EU) 2017/2226, (EU) 2018/1240, (EU) 2018/1726 and (EU) 2018/1861 of the European Parliament and of the Council and Council Decisions 2004/512/EC and 2008/633/JHA (OJ L 135, 22.5.2019, p. 27–84) and Regulation (EU) 2019/818 of the European Parliament and of the Council of 20 May 2019 on establishing a framework for interoperability between EU information systems in the field of police and judicial cooperation, asylum and migration and amending Regulations (EU) 2018/1726, (EU) 2018/1862 and (EU) 2019/816 (OJ L 135, 22.5.2019, p. 85–135)**

<sup>22</sup> Regulation (EU) 2017/2226 of 30 November 2017 establishing an Entry/Exit System (EES) to register entry and exit data and refusal of entry data of third-country nationals crossing the external borders of the Member States and determining the conditions for access to the EES for law enforcement purposes, and amending the Convention implementing the Schengen Agreement and Regulations (EC) No 767/2008 and (EU) No 1077/2011 (OJ L 327, 9.12.2017, p. 20).

<sup>23</sup> Regulation (EC) No 767/2008/EC of the European Parliament and of the Council of 9 July 2008 concerning the Visa Information System (VIS) and the exchange of data between Member States on short-stay visas (VIS Regulation) (OJ L 218, 13.8.2008, p. 60).

<sup>24</sup> COM(2016) 731 final of 16 November 2016.

<sup>25</sup> COM(2016) 272 final/2 of 4 May 2016.

<sup>26</sup> COM(2016) 881 final, 882 final and 883 final of 21 December 2016.

<sup>27</sup> COM(2017) 344 final of 29 June 2017.

<sup>28</sup> COM(2017) 794 final of 12 December 2017.

~~(2120)~~ **In order to benefit from the knowledge and expertise of the decentralised agencies with competences in the areas of border management, visa policy and large-scale IT systems, the Commission should in a timely manner involve relevant agencies in the work of the Coordination Committee set up by this Regulation, especially at the beginning of the programming phase and at mid-term. Where appropriate, the Commission should also be able to involve the relevant agencies in the monitoring and evaluation, in particular with a view to ensure that the actions supported by the instrument are compliant with the relevant Union acquis and agreed Union priorities.**

The instrument should complement and reinforce the activities ~~to implement~~ **implementing** European integrated border management in line with shared responsibility and solidarity between the Member States and the European Border and Coast Guard Agency representing the two pillars of the European Border and Coast Guard. This means, in particular that, when drawing up their programmes, Member States should take into account the analytical tools ~~and~~ operational and technical guidelines developed by the European Border and Coast Guard Agency as well as the training curricula developed by it, such as the common core curricula for the training of border guards, including its components with regard to fundamental rights and access to international protection. In order to develop complementarity between its ~~mission~~ **tasks** and the responsibilities of the Member States for the control of the external borders ~~as well as~~ **and** to ensure consistency and ~~to avoid cost~~ inefficiency, the Commission should **in a timely manner** consult the European Border and Coast Guard Agency on the draft ~~national~~ programmes submitted by the Member States in as far as ~~it falls~~ **they fall** within the Agency's competencies, in particular on the activities financed under operating support.

~~(2221)~~ **In so far as the affected Member States so request, the** The instrument should support the implementation of the hotspot approach as outlined in the Commission's Communication on *A European Agenda on Migration* and endorsed by the European Council of 25 and 26 June 2015<sup>29</sup> **and further defined in the Regulation (EU) 2019/1896.** The hotspot approach provides operational support to Member States ~~affected by~~ **facing** disproportionate migratory ~~pressure~~ **challenges** at the Union's external borders. It offers integrated, comprehensive and targeted assistance in a spirit of solidarity and shared responsibility ~~as well as with a view to safeguarding the integrity of the Schengen area.~~

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<sup>29</sup> — EUCO 22/15 CO EUR 8 CONCL 3.

- (23~~22~~) In the ~~interests~~**spirit** of solidarity ~~in the Schengen area as a whole and in the spirit of~~**and** shared responsibility for the protection of the Union's external borders, where ~~weaknesses~~**vulnerabilities** or risks are identified, in particular following a Schengen evaluation in accordance with Council Regulation (EU) No 1053/2013<sup>30</sup>, the Member State concerned should adequately address the matter by using resources under its programme to implement recommendations adopted pursuant to that Regulation and in line with vulnerability assessments carried out by the European Border and Coast Guard Agency in accordance with Article ~~13~~**32** of Regulation (EU) ~~2016/1624~~**2019/1896**.
- (24~~23~~) The instrument should ~~express solidarity and shared responsibility through~~**provide** financial assistance ~~for~~**to** those Member States that fully apply the Schengen provisions on external borders and visas ~~as well as~~**and to** those which are preparing for full participation in Schengen, and should be used by the Member States in the interests of the Union's common policy for the management of the external borders.
- (24) While providing support to Member States' investments in border management, this instrument should not provide funding for new, permanent infrastructure and buildings at those internal borders where controls have not been lifted yet. However, at those borders, investments in movable infrastructure for border control and the maintenance, limited upgrading or replacement of the existing infrastructure, required to continue complying with the Schengen Borders Code, should be supported by this instrument.**

<sup>30</sup> Council Regulation (EU) No 1053/2013 of 7 October 2013 establishing an evaluation and monitoring mechanism to verify the application of the Schengen *acquis* (OJ L 295, 6.11.2013, p. 27).

- (25) In accordance with Protocol No 5 to the 2003 Act of Accession<sup>31</sup> on the transit of persons by land between the region of Kaliningrad and other parts of the Russian Federation, the instrument should bear any additional cost incurred in implementing the specific provisions of the Union *acquis* covering such transit, namely Council Regulation (EC) No 693/2003<sup>32</sup> and Council Regulation (EC) No 694/2003<sup>33</sup>. The need for continued financial support for foregone fees, however, should be dependent upon the visa regime of the Union in force with the Russian Federation.
- (26) To contribute to the achievement of the policy objective of the instrument, Member States should ensure that their programmes ~~address~~**include actions addressing all** the specific objectives of the instrument,~~that the priorities chosen are in line with the agreed EU priorities and the implementing measures as set out in Annex II and that the allocation of resources between~~**among the specific** objectives and actions is proportionate to the challenges and needs they are faced with~~ensures that those objectives can be met.~~
- (27) Synergies, consistency and efficiency should be sought with other EU Funds and overlap between the actions should be avoided.
- (28) Return of third-country nationals who are the subject of return decisions issued by a Member State is one of the components of European integrated border management as outlined in Regulation (EU) ~~2016/1624~~**2019/1896**. However, due to its nature and objective, measures in the field of return fall outside the scope of support of the instrument and are covered by Regulation (EU) No .../... [new AMF]<sup>34</sup>.

<sup>31</sup> OJ L 236, 23.9.2003, p. 946.

<sup>32</sup> Council Regulation (EC) No 693/2003 of 14 April 2003 establishing a specific Facilitated Transit Document (FTD), a Facilitated Rail Transit Document (FRTD) and amending the Common Consular Instructions and the Common Manual (OJ L 99, 17.4.2003, p. 8).

<sup>33</sup> Council Regulation (EC) No 694/2003 of 14 April 2003 on uniform formats for Facilitated Transit Documents (FTD) and Facilitated Rail Transit Documents (FRTD) provided for in Regulation (EC) No 693/2003 (OJ L 99, 17.4.2003, p. 15).

<sup>34</sup> OJ L [...], [...], p.

- (29) To acknowledge the important role of the Member States' customs authorities at the external borders and to ensure that they have at their disposal sufficient means to implement their broad scope of tasks at these borders, the instrument for financial support for customs control equipment established by Regulation (EU) No .../... [new Customs Control Equipment Fund] of the European Parliament and of the Council should provide these national authorities with the necessary funding to invest in equipment to carry out customs control as well as equipment that can in addition to customs control serve other purposes such as border control.
- (30) Most customs control equipment **and ICT systems** 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 this Regulation will ~~exclude~~ **financially support** equipment ~~that can be used for both~~ **and ICT systems of which the primary purpose is integrated** border management ~~and~~, **but will also allow their use for the complementary area of** customs control. On the other hand, the instrument for customs control equipment **established by Regulation [2019/XXX]** will ~~not only support~~ financially **support** 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 43(e) of Regulation (EU) 2016/1624 **2019/1896**, thereby enabling customs and border authorities to work together and maximising the impact of the Union budget through co-sharing and inter-operability of control equipment.
- (31) Border surveillance at sea is considered one of the coastguard functions performed in the Union maritime domain. National authorities carrying out coast guard functions are also responsible for a wide range of tasks, which may include, but would not be limited to, maritime safety, security, search and rescue, border control, fisheries control, customs control, general law enforcement and environmental protection. The broad scope of coastguard functions brings them under the remit of different Union policies which should seek synergies to achieve more effective and efficient results.



**(32) When implementing actions funded under the instrument which are related to maritime border surveillance, Member States should pay special attention to their international obligations regarding search and rescue at sea. In that regard, equipment and systems supported under the instrument should also be able to be used to address search and rescue situations which may arise during a border surveillance operation at sea.**

~~(32)~~**33)** In addition to the Union cooperation on coastguard functions among the European Border and Coast Guard Agency established by Regulation (EU) ~~2016/1624~~**2019/1896**, the European Maritime Safety Agency established by Regulation (EC) 1406/2002 of the European Parliament and of the Council<sup>35</sup> and the European Fisheries Control Agency established by Council Regulation (EC) No 768/2005<sup>36</sup>, improved coherence of the activities in the maritime domain should also be achieved at national level. Synergies between the various actors in the maritime environment should be in line with European integrated border management and maritime security strategies.

~~(33)~~**34)** To strengthen the complementarity and to reinforce the consistency of maritime activities as well as to avoid duplication of efforts and to alleviate budgetary constraints in an area of costly activities such as the maritime domain, the instrument ~~should~~**may be additionally used to** support maritime operations of multipurpose character ~~where the main objective is border surveillance but other objectives could additionally be pursued simultaneously.~~

**(35) Equipment and ICT systems, financed under this instrument should also be able to be used for achieving the objectives of the Internal Security Fund established by Regulation (EU) No ../..[ISF] and of the Asylum, Migration and Integration Fund established by Regulation (EU) No ../..[AMIF].**

**Such equipment and ICT systems should remain available and deployable for effective and secure border control activities and its use for the above mentioned objectives should be limited in time.**

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<sup>35</sup> Regulation (EC) No 1406/2002 of the European Parliament and of the Council of 27 June 2002 establishing a European Maritime Safety Agency (OJ L 208, 5.8.2002, p. 1).

<sup>36</sup> Council Regulation (EC) No 768/2005 of 26 April 2005 establishing a Community Fisheries Control Agency and amending Regulation (EEC) No 2847/93 establishing a control system applicable to the common fisheries policy (OJ L 128, 21.5.2005, p. 1).

~~(34) Measures in and in relation to third countries supported through the instrument~~

**(36) The instrument should primarily serve internal Union policy in line with its specific objectives. The instrument should be able to at the same time, where appropriate, support actions in line with Union priorities in and in relation to third countries. Those measures** should be implemented in full synergy and coherence with and should complement other actions outside the Union supported through the Union's external financing instruments. In particular, in implementing such actions, full coherence should be sought with the principles and general objectives of the Union's external action and foreign policy related to the **, respect the principle of policy coherence for development and be consistent with the strategic programming documents for the** country or region in question. ~~In~~ **They should also focus on non-development oriented measures, and serve the interests of the Union's internal policies and be consistent with activities undertaken inside the Union. In its mid-term and retrospective evaluations, the Commission should pay particular attention to the implementation of projects in or in** relation to the external dimension, the instrument should target support to enhance cooperation with third countries and to reinforce key aspects of their border surveillance and border management capabilities in areas of interest to the Union's migration policy and Union's security objectives.

~~(35)~~**37)** Funding from the Union budget should concentrate on activities where Union intervention can bring added value as compared to actions by Member States alone. As the Union is in a better position than Member States to provide a framework for expressing Union solidarity in border control, **management and** common visa policy and the management of migration flows, and to provide a platform for the development of common **large-scale** IT systems underpinning those policies, financial support provided under this Regulation will contribute in particular to strengthening national and Union capabilities in those areas.

**(38) When promoting the actions supported by this instrument, the recipients of Union funding should provide information in the languages relevant to the target audience. To ensure the visibility of Union funding, recipients of that funding should refer to its origin when communicating on the action. To this end, recipients should ensure that all communications to the media and the public, display the Union emblem, and explicitly mention the Union's financial support.**

**(39) It should be possible for the Commission to use financial resources under this instrument to promote best practices and exchange information as regards to the implementation of the instrument.**

**(40) The Commission should publish information on the support provided from the thematic facility under direct or indirect management in a timely manner and update this information where appropriate. It should be possible to sort the data by specific objective, name of beneficiary, the amount legally committed and the nature and purpose of the measure.**

~~(3641)~~ A Member State may be deemed not to be compliant with the relevant Union acquis, including as regards the use of operating support under this instrument, if it has failed to fulfil its obligations under the Treaties in the areas of border management and visa, **including as regards fundamental rights obligations,** if there is a clear risk of a serious breach by the Member State of the Union's values when implementing the acquis on border management and visa or, if an evaluation report under the Schengen evaluation and monitoring mechanism has identified deficiencies in the relevant area.

~~(3742)~~ The instrument should ~~reflect the need for increased flexibility and simplification while respecting requirements in terms of predictability, and ensuring~~**ensure** a fair and transparent distribution of resources to meet the objectives laid down in this Regulation. **In order to meet transparency requirements, the Commission should publish information on the annual and multiannual programmes of the thematic facility. In line with Article 44(1) of Regulation (EU) No .../... [CPR], Member States should ensure that within six months of the programme's approval, there is a website where information on the programme under its responsibility is available, covering the programme's objectives, activities, available funding opportunities and achievements.**

~~(3843)~~ This Regulation should establish the initial amounts for Member States' programmes calculated on the basis of criteria laid down in Annex I, which reflect the length and the ~~threat~~**impact** levels at land and sea border sections, the workload at the airports and the consulates as well as the number of consulates. **In view of the special needs of those Member States who have experienced the highest number of asylum applications per capita in 2018 and 2019, it is appropriate to increase the fixed amounts for Cyprus, Malta and Greece.**

~~(39)~~(44) These initial amounts will form a basis for Member States' long term investments. To take account of changes in the baseline situation, such as the pressure on the Union external border and the workload at the external borders and at consulates, an additional amount will be allocated to the Member States at mid-term and will be based on the latest available statistical data as set out in the distribution key taking into account the state of programme implementation.

**(45) The mid-term evaluation should be used to assess the effectiveness and Union added value of the instrument and provide a transparent overview of its implementation.**

~~(40)~~(46) As challenges in the area of border management and visas are constantly evolving there is a need to adapt the allocation of funding to the changes in migration flows, **priorities for visa policy and border management, including as a result of increased** pressure at the border ~~and security threats,~~ and **to** steer funding towards the priorities with the highest added value for the Union. To respond to pressing needs, changes in policy and Union priorities and to steer funding towards actions with a high level of added value for the Union, part of the funding will be periodically allocated to specific actions, Union actions and emergency assistance, via a thematic facility. **The thematic facility offers flexibility in the management of the Instrument and should also be able to be implemented through Member States' programmes.**

~~(41)~~(47) Member States should be encouraged to use part of their programme allocation to fund the actions listed in Annex IV by benefiting from a higher Union contribution.

~~(42)~~(48) The instrument should contribute to supporting operating costs related to border management, common visa policy and large-scale IT systems and should thereby enable Member States to maintain capabilities which are crucial for the Union as a whole. Such support consists of full reimbursement of specific costs related to the objectives of the instrument and should form an integral part of the Member States' programmes.

- (4349) Part of the available resources under the instrument could also be allocated to Member States' programmes for the implementation of specific actions in addition to their initial allocation. These specific actions should be identified at Union level and should concern actions **with a Union added value** which require cooperative effort **among Member States** or actions necessary to address developments in the Union which require additional funding to be made available to one or more Member States, such as the purchase through the national programmes of Member States of technical equipment needed by the European Border and Coast Guard Agency to perform its operational activities, the modernisation of the processing of visa applications, the development of ~~new~~ large-scale IT systems and the setting-up of interoperability between those systems. These specific actions will be defined by the Commission in its work programmes.
- (4450) To complement the implementation of the policy objective of this instrument at national level through Member States' programmes, the instrument should also provide support for actions at Union level. Such actions should serve overall strategic purposes within the scope of intervention of the instrument relating to policy analysis and innovation, transnational mutual learning and partnerships and the testing of new initiatives and actions across the Union.
- (4551) In order to strengthen the Union's capacity to **address** immediately ~~address unforeseen~~ **urgent and specific needs in the event of an emergency situation, such as a large** or disproportionate migratory pressure, **influx of third country nationals** in particular at those border sections where ~~the~~ **a high and critical** impact level has been identified in line with Regulation (EU) No 1052/2013 **2019/1896** of the European Parliament and of the Council<sup>37</sup> as such that it jeopardises the functioning of the Schengen area as a whole, as well as pressure on the visa sections of Member States' consulates or risks to border security **in other duly substantiated situations where immediate action at the external borders is required**, it should be possible to provide emergency assistance, in accordance with the framework set out in this Regulation.

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<sup>37</sup> Regulation (EU) No 1052/2013 of the European Parliament and of the Council of 22 October 2013 establishing the European Border Surveillance System (Eurosur) (OJ L 295, 6.11.2013, p. 11). Regulation (EU) 2019/1896 of the European Parliament and of the Council of 13 November 2019 on the European Border and Coast Guard and repealing Regulations (EU) No 1052/2013 and (EU) 2016/1624

~~(46) The policy objective of this instrument will be also addressed through financial instruments and budgetary guarantee under the policy window(s) [...] of the InvestEU Fund. Financial support should be used to address market failures or sub-optimal investment situations, in a proportionate manner and actions should not duplicate or crowd out private financing or distort competition in the internal market. Actions should have a clear European added value.~~

~~(47)~~<sup>52</sup> This Regulation lays down a financial envelope for the entire instrument which is to constitute the prime reference amount, within the meaning of [point ~~47~~<sup>18</sup> of the ~~Interinstitutional~~**Inter-institutional** Agreement of ~~2-16~~ December ~~2013~~<sup>2020</sup> between the European Parliament, the Council and the Commission on budgetary discipline, on cooperation in budgetary matters and on sound financial management]<sup>38</sup>, for the European Parliament and the Council during the annual budgetary procedure. **The prime reference amount allocated to the instrument is increased by an additional amount of EUR 1 billion in 2018 prices as specified in Annex II to the MFF Regulation.**

~~(48)~~<sup>53</sup> Regulation (EU, Euratom) No-.../... [new Financial Regulation] ('Financial Regulation') **2018/1046 of the European Parliament and of the Council**<sup>39</sup> applies to this instrument. ~~It~~**The Financial Regulation** lays down rules on the implementation of the Union budget, including the rules on grants, prizes, procurement, indirect implementation, financial assistance~~management~~, financial instruments~~and~~, budgetary guarantees. ~~In order to ensure coherence in-~~ **financial assistance and the implementation reimbursement** of Union funding programmes, the Financial Regulation is to apply to the actions to be implemented in direct or indirect management under the instrument.**external experts.**

~~(49)~~<sup>54</sup> For the purpose of implementation of actions under shared management, the instrument should form part of a coherent framework consisting of this Regulation, ~~the Financial Regulation~~ **(EU, Euratom) No 2018/1046** and Regulation (EU) No-.../... [CPR].

<sup>38</sup> OJ L 433I, 22.12.2020, p. 28

<sup>39</sup> **Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012 (OJ L 193, 30.7.2018, p. 1**

~~(50)~~<sup>(55)</sup> Regulation (EU) No .../... [CPR] establishes the framework for action by the European Regional Development Fund (ERDF), the European Social Fund Plus (ESF+), the Cohesion Fund, the European Maritime and Fisheries Fund (EMFF), the Asylum~~and~~, Migration **and Integration** Fund (~~AMF~~**AMIF**), the Internal Security Fund (ISF) and the instrument for border management and visa (BMVI), as a part of the Integrated Border Management Fund (IBMF), and it lays down, in particular, the rules concerning programming, monitoring and evaluation, management and control for EU funds implemented under shared management. Additionally it is necessary to specify the objectives of the instrument for border management and visa in this Regulation, and to lay down specific provisions concerning activities that may be financed through this instrument.

**(56) A pre-financing scheme for the instrument is set out in Article 84 of Regulation EU.../....[CPR] with a specific pre-financing rate set out in this Regulation. In addition, in order to ensure a prompt reaction to an emergency situation, it is appropriate to set up a specific pre-financing rate for emergency assistance. The pre-financing scheme should ensure that a Member State has the means to provide support to beneficiaries from the start of the implementation of the programme.**

~~(54)~~<sup>(57)</sup> The types of financing and the methods of implementation under this Regulation should be chosen on the basis of their ability to achieve the specific objectives of the actions and to deliver 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.

- (58) In accordance with Article 193(2) of Regulation (EU, Euratom) No 2018/1046, a grant may be awarded for an action which has already begun, provided that the applicant can demonstrate the need for starting the action prior to signature of the grant agreement. However, the costs incurred prior to the date of submission of the grant application are not eligible, except in duly justified exceptional cases. In order to avoid any disruption in Union support which could be prejudicial to the Union's interests, it should be possible, for a limited period of time at the beginning of the multi-annual financial framework 2021-2027, that costs incurred in respect of actions supported under this Regulation under direct management and which have already started, be considered eligible as of 1 January 2021, even if they were incurred before the grant application or the request for assistance was submitted.**
- (59) In order to make the most use of the single audit principle, it is appropriate to set up specific rules on the control and audit of projects where international organisations whose internal control systems have been positively assessed by the Commission are the beneficiaries. For those projects, managing authorities should have the possibility to limit their management verifications provided that the beneficiary delivers all necessary data and information on the progress of the project and the eligibility of underlying expenditure in a timely manner. In addition, where a project implemented by such an international organisation is part of an audit sample, it should be possible for the audit authority to carry out its work in line with the principles of the International Standard on Related Services (ISRS) 4400, 'Engagements to Perform Agreed-upon Procedures Regarding Financial Information'.**



(5260) In accordance with Regulation (EU, **Euratom**) No .../... [~~new Financial Regulation~~]<sup>40</sup> **2018/1046**, Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council<sup>41</sup>, Council Regulation (Euratom, EC) No 2988/95<sup>42</sup>, Council Regulation (Euratom, EC) No 2185/96<sup>43</sup> and Council Regulation (EU) 2017/1939<sup>44</sup>, the financial interests of the Union are to be protected through proportionate measures, including the prevention, detection, correction and investigation of irregularities ~~and~~ **including** 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 illegal activity affecting the financial interests of the Union. In accordance with Regulation (EU) 2017/1939, the European Public Prosecutor's Office ~~(("the EPPO"))~~ may investigate and prosecute ~~fraud and other criminal offences affecting~~ **against** the **Union's** financial interests ~~of the Union~~, as provided for in Directive (EU) 2017/1371 of the European Parliament and of the Council<sup>45</sup>. In accordance with the ~~Financial Regulation~~ **(EU, Euratom) No 2018/1046**, 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 **in respect of those Member States participating in enhanced cooperation pursuant to Regulation (EU) 2017/1939**, and the European Court of Auditors (ECA)), and to ensure that any third parties involved in the implementation of Union funds grant equivalent rights. **Member States should cooperate fully and provide**

<sup>40</sup> — OJ C [...], [...], p. [...].

<sup>41</sup> Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) and repealing Regulation (EC) No 1073/1999 of the European Parliament and of the Council and Council Regulation (Euratom) No 1074/1999, (OJ L 248, 18.9.2013, p. 1).

<sup>42</sup> Council Regulation (Euratom, EC) No 2988/95 of 18 December 1995 on the protection of the European Communities' financial interests (OJ L 312, 23.12.95, p. 1).

<sup>43</sup> Council Regulation (Euratom, EC) No 2185/96 of 11 November 1996 concerning on-the-spot checks and inspections carried out by the Commission in order to protect the European Communities' financial interests against fraud and other irregularities (OJ L 292, 15.11.1996, p. 2).

<sup>44</sup> Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office ('the EPPO') (OJ L 283, 31.10.2017, p. 1).

<sup>45</sup> Directive (EU) 2017/1371 of the European Parliament and of the Council of 5 July 2017 on the fight against fraud to the Union's financial interests by means of criminal law (OJ L 198, 28.7.2017, p. 29).

**all necessary assistance to Union institutions, agencies and bodies in the protection of the Union's financial interests.**

(~~53~~**61**) 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~~**Those** rules are laid down in the Financial Regulation and determine in particular the procedure for establishing and implementing the budget through grants, procurement, prizes **and**, indirect implementation, and provide for checks on the responsibility of financial actors. Rules adopted on the basis of Article 322 TFEU also ~~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.~~ **include a general regime of conditionality for the protection of the Union budget.**

(~~54~~**62**) Pursuant to Article 94 of Council Decision 2013/755/EU<sup>46</sup>, persons and entities established in overseas countries and territories (OCTs) are eligible for funding subject to the rules and objectives of the instrument and possible arrangements applicable to the Member State to which the relevant overseas country or territory is linked.

(~~55~~**63**) Pursuant to Article 349 of the TFEU and in line with the Commission Communication *A stronger and renewed strategic partnership with the EU's outermost regions*, endorsed by the Council in its conclusion of 12 April 2018, the relevant Member States should ensure that their national programmes address emerging threats the outermost regions are confronted with. The instrument supports these Member States with adequate resources to help the outermost regions as appropriate.

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<sup>46</sup> Council Decision 2013/755/EU of 25 November 2013 on the association of the overseas countries and territories with the European Union (Overseas Association Decision) (OJ L 344, 19.12.2013, p. 1).

(5664) Pursuant to paragraph 22 and 23 of the ~~Interinstitutional~~**Inter-institutional** Agreement for **of 13 April 2016 on** Better Law-Making of 13 April 2016<sup>47</sup>, ~~there is a need to evaluate,~~ this instrument **should be evaluated** on the basis of information collected ~~through~~**in accordance with** specific monitoring requirements, while avoiding ~~overregulation and an~~ administrative burden, in particular on Member States. ~~These,~~**and overregulation. Those** requirements, where appropriate, ~~can~~**should** include measurable indicators, as a basis for evaluating the effects of the instrument on the ground. In order to measure the achievements of the instrument, indicators and related targets should be established in relation to each specific objective of the instrument. **Those indicators should include qualitative and quantitative indicators.**

(5765) Reflecting the importance of tackling climate change in ~~line~~**accordance** with the ~~Union's~~**Union's** commitments to implement the Paris Agreement and **its commitment to** the United Nations Sustainable Development Goals, ~~this instrument will~~**the actions under this Regulation should** contribute to ~~mainstream climate actions and to the achievement of an overall~~**a 30 % target of 25 % of the EU budget expenditures supporting all MFF expenditure being spent on mainstreaming** climate objectives. ~~Relevant actions will be identified during~~**and to working towards** the preparation and implementation**ambition of 7.5 % of the instrument. Budget reflecting biodiversity expenditure in 2024 and 10 % in 2026 and reassessed in 2027 while considering** the context**existing overlaps between climate and biodiversity goals.**

**The instrument should support activities that respect the climate and environmental standards and priorities** of the relevant evaluations and review processes. **Union and would do no significant harm to environmental objectives within the meaning of Article 17 of Regulation (EU) No 2020/852.**

<sup>47</sup> 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.

**(66) Regulation (EU) No 514/2014 or any act applicable to the 2014–2020 programming period should continue to apply to programmes and projects supported by the instrument under the 2014–2020 programming period. Since the implementation period of Regulation (EU) No 514/2014 overlaps with the programming period covered by this Regulation and in order to ensure continuity of implementation of certain projects approved by that Regulation, phasing provisions should be laid down. Each individual phase of the phased project should be implemented in accordance with the rules of the programming period under which it receives funding.**

**(5867) Through the indicators and financial reporting, the Commission and the Member States should monitor the implementation of the instrument, in accordance with the relevant provisions of Regulation (EU) No .../... X [CPR] and this Regulation. Starting from 2023, Member States should submit to the Commission annual performance reports covering the latest accounting year. The reports should contain information on the progress made in the implementation of programmes. The Commission should translate the summaries of the annual performance reports, submitted by the Member States, into all official languages and make them publicly available on its website together with links to the Member States' websites referred to in Art. 44(1) [CPR].**

**(5968) In order to supplement and amend non-essential elements of this Regulation the power to adopt acts in accordance with Article 290 the Treaty on the Functioning of the European Union should be delegated to the Commission in respect of the list of actions eligible for support under Annex III, the list of actions eligible for higher co-financing as listed in Annex IV, operating support under Annex VII and in order to further develop the common monitoring and evaluation framework. It is of particular importance that the Commission carries out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement on Better Law Making of 13 April 2016<sup>48</sup>.**

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<sup>48</sup> OJ L 123, 12.5.2016, p. 1.

(~~60~~**69**) In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred ~~onto~~ the Commission. These powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council<sup>49</sup> **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**<sup>50</sup>. The examination procedure should be used for implementing acts that lay down common obligations on Member States, in particular on the provision of information to the Commission, and the advisory procedure should be used for the adoption of implementing acts relating to the modalities of providing information to the Commission in the framework of programming and reporting, given their purely technical nature.

**Furthermore, given the nature and purpose of emergency assistance provided for by this Regulation, it is appropriate to provide for the use of immediately applicable implementing acts on duly justified imperative grounds of urgency in accordance with Article 8 of Regulation 182/2011 for the adoption of decisions to award such assistance.**

(~~61~~**70**) Participation by a Member State in this instrument should not coincide with its participation in a temporary financial instrument of the Union which supports the beneficiary Member States to finance, among others, actions at new external borders of the Union for the implementation of the Schengen *acquis* on borders and visas and external border control.

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<sup>49</sup> ~~OJ L 55, 28.2.2011, p. 13.~~

<sup>50</sup> OJ L 55, 28.2.2011, p. 13.

- (~~62~~71) As regards Iceland and Norway, this Regulation constitutes a development of the Schengen *acquis* within the meaning of the Agreement concluded by the Council of the European Union and the Republic of Iceland and the Kingdom of Norway concerning the latter's association with the implementation, application and development of the Schengen *acquis*<sup>51</sup> which falls within the areas referred to in Article 1, Points A and B of Council Decision 1999/437/EC<sup>52</sup>.
- (~~63~~72) As regards Switzerland, this Regulation constitutes a development of provisions of the Schengen *acquis* within the meaning of the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis*<sup>53</sup> which falls within the area referred to in Article 1, Points A and B of Decision 1999/437/EC read in conjunction with Article 3 of Council Decision 2008/146/EC<sup>54</sup>.
- (~~64~~73) As regards Liechtenstein, this Regulation constitutes a development of the provisions of the Schengen *acquis* within the meaning of the Protocol between the European Union, the European Community, the Swiss Confederation and the Principality of Liechtenstein on the accession of the Principality of Liechtenstein to the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis*<sup>55</sup> which falls within the area referred to in Article 1, Points A and B of Decision 1999/437/EC read in conjunction with Article 3 of Council Decision 2011/350/EU<sup>56</sup>.

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<sup>51</sup> OJ L 176, 10.7.1999, p. 36.

<sup>52</sup> Council Decision 1999/437/EC of 17 May 1999 on certain arrangements for the application of the Agreement concluded by the Council of the European Union and the Republic of Iceland and the Kingdom of Norway concerning the association of those two States with the implementation, application and development of the Schengen *acquis* (OJ L 176, 10.7.1999, p. 31).

<sup>53</sup> OJ L 53, 27.2.2008, p. 52.

<sup>54</sup> Council Decision 2008/146/EC of 28 January 2008 on the conclusion, on behalf of the European Community, of the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis* (OJ L 53, 27.2.2008, p. 1).

<sup>55</sup> OJ L 160, 18.6.2011, p. 21.

<sup>56</sup> Council Decision 2011/350/EU of 7 March 2011 on the conclusion, on behalf of the European Union, of the Protocol between the European Union, the European Community, the Swiss Confederation and the Principality of Liechtenstein on the accession of the Principality of Liechtenstein to the Agreement between the European Union, the European Community and

**(74) In order to specify the nature and modalities of the participation in the instrument by countries associated with the implementation, application and development of the Schengen *acquis*, further arrangements should be concluded between the Union and those countries under the relevant provisions of their respective association agreements. Such arrangements should constitute international agreements within the meaning of Article 218 TFEU. With a view to minimise a possible gap between the moment when this Instrument will become binding on the country concerned and the entry into force of the arrangements, it is appropriate to start the negotiations on such arrangements as soon as possible after the respective country has notified to the Council and the Commission its decision to accept the contents of this Instrument and to implement it in its internal legal order. The conclusion of such arrangements should take place after the country concerned has informed in writing upon fulfilment of all its internal requirements.**

~~(65)~~**75**) In accordance with Articles 1 and 2 of Protocol No 22 on the position of Denmark, annexed to TEU and TFEU, Denmark is not taking part in the adoption of this Regulation and is not bound by it or subject to its application. Given that this Regulation builds upon the Schengen *acquis*, Denmark should, in accordance with Article 4 of that Protocol, decide within a period of six months after the Council has decided on this Regulation whether it will implement this Regulation in its national law.

~~(66)~~**76**) This Regulation constitutes a development of the provisions of the Schengen *acquis* in which Ireland does not take part, in accordance with Council Decision 2002/192/EC<sup>57</sup>. Ireland is therefore not taking part in its adoption and is not bound by it or subject to its application.

~~(67)~~**77**) It is appropriate to align the period of application of this Regulation with that of Council Regulation (EU, Euratom) .../... [Multiannual Financial Framework Regulation]<sup>58</sup>.

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the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis*, relating to the abolition of checks at internal borders and movement of persons (OJ L 160, 18.6.2011, p. 19).

<sup>57</sup> Council Decision 2002/192/EC of 28 February 2002 concerning Ireland's request to take part in some of the provisions of the Schengen *acquis* (OJ L 64, 7.3.2002, p. 20).

<sup>58</sup> OJ L [...], [...], p.

**(78) In order to ensure continuity in providing support in the relevant policy area and to allow implementation to start from the beginning of the multi-annual financial framework 2021-2027, this Regulation should enter into force as a matter of urgency and should apply from 1 January 2021.**



HAVE ADOPTED THIS REGULATION:

## CHAPTER I

### GENERAL PROVISIONS

#### *Article 1*

##### **Subject matter**

1. This Regulation establishes the instrument for financial support for border management and visa ('the instrument') as part of the Integrated Border Management Fund ('the Fund') **for the period from 1 January 2021 to 31 December 2027.**
2. Jointly with Regulation (EU) No .../... {Customs Control Equipment Fund},<sup>59</sup> establishing as part of the {Integrated Border Management Fund} the instrument for financial support for customs control equipment, this Regulation establishes the Fund.
3. ~~It~~ **This Regulation** lays down the objectives of the instrument, **the specific objectives and measures to implement those specific objectives**, 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) 'blending operation' means actions supported by the Union budget, including within blending facilities pursuant to Article 2(6) of the Financial Regulation, combining non-repayable forms of support and/or financial instruments from the Union budget with repayable forms of support from development or other public finance institutions, as well as from commercial finance institutions and investors;~~

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<sup>59</sup> OJ L [...], [...], p.

- (21) ‘border crossing point’ means any crossing point authorised by the competent authorities for the crossing of external borders as notified in accordance with Article 2(8) of Regulation (EU) 2016/399 of the European Parliament and of the Council<sup>60</sup>;
- (32) ‘European integrated border management’ means the components listed in Article 3 4 of Regulation (EU) 2016/1624;2019/1896;
- (43) ‘external borders’ means ~~the borders of the Member States: land borders, including river and lake borders, sea borders as well as their airports, river ports, sea ports and lake ports to which the provisions of Union law on the crossing of external borders apply, including as~~ **defined in point (2) of Article 2 of Regulation (EU) No 399/2016 and** those internal borders at which the controls have not been lifted yet;
- (54) ‘external border section’ means the whole or a part of the external land or sea border of a Member State as defined by **point (11) of Article 2 of** Regulation (EU) No ~~1052/2013~~;2019/1896;
- (65) ‘hotspot area’ means the hotspot area defined in Article 2(~~10~~**(23)**) of Regulation (EU) ~~2016/1624~~2019/1896;
- (76) ‘internal borders at which the controls have not been lifted yet’ means:
- (a) the common border between a Member State fully implementing the Schengen *acquis* and a Member State bound to apply the Schengen *acquis* in full, in conformity with its Act of Accession, but for which the relevant Council Decision authorising it to fully apply that *acquis* has not yet entered into force;
  - (b) the common border between two Member States bound to apply the Schengen *acquis* in full, in conformity with their respective Acts of Accession, but for which the relevant Council Decision authorising them to fully apply that *acquis* has not yet entered into force.

<sup>60</sup> Regulation (EU) 2016/399 of the European Parliament and of the Council of 9 March 2016 on a Union Code on the rules governing the movement of persons across borders (Schengen Borders Code) (OJ L 77, 23.3.2016, p. 1).

**(7) ‘emergency situation’ means a situation resulting from an urgent and exceptional pressure where a large or disproportionate number of third-country nationals have crossed, are crossing or are expected to cross the external borders of one or more Member States and/or where incidents related to illegal immigration or cross-border crime occur at external borders of one or more Member States that have a decisive impact on border security to such an extent that they risk jeopardizing the functioning of the Schengen area, or any other situation in respect of which it is duly substantiated that immediate action at the external borders is required, within the objectives of the instrument.**

### *Article 3*

#### **Objectives of the instrument**

1. As part of the Integrated Border Management Fund, the policy objective of the instrument shall be ensuring strong and effective European integrated border management at the external borders, **thereby contributing to ensuring a high level of internal security within the Union**, while safeguarding the free movement of persons within it, ~~in full compliance with the Union’s commitments on fundamental rights, thereby contributing to guaranteeing a high level of security in~~ **and fully respecting the Union relevant Union acquis and the international obligations of the Union and the Member States arising from international instruments to which they are party.**
2. Within the policy objective set out in paragraph 1, the instrument shall contribute to the following specific objectives:
  - (a) supporting effective European integrated border management at the external borders implemented by the European Border and Coast Guard as a shared responsibility of the European Border and Coast Guard Agency and of the national authorities responsible for border management, to facilitate legitimate border crossings, to prevent and detect illegal immigration and cross-border crime and to effectively manage migratory flows;
  - (b) supporting the common visa policy to **ensure harmonised approach with regard to the issuance of visas and to** facilitate legitimate travel ~~and~~, **while helping** prevent migratory and security risks.

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

#### **Article 4**

##### **Non-discrimination and respect for fundamental rights**

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

#### **Article 45**

##### **Scope of support**

1. Within the objectives referred to in Article 3 and in line with the implementation measures listed in Annex II, the instrument shall in particular support the actions listed in Annex III.

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

2. To achieve the objectives of this Regulation, the instrument may support **the** actions in line with Union priorities as referred to in Annex III in relation to and in third countries, where appropriate, in accordance with Article ~~5~~**19**.

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

- (a) are carried out in synergy and in coherence with other actions outside the Union supported through Union instruments;
- (b) are coherent with the Union's external policy, respect the principle of policy coherence for development and are consistent with the strategic programming documents for the region or country in question;
- (c) focus on non-development-oriented measures; and
- (d) serve the interests of the Union's internal policies and are consistent with activities undertaken inside the Union.

34. The following actions shall not be eligible:

- (a) the actions referred to in paragraph 1(a) of Annex III at those internal borders at which controls have not been lifted yet;
- (b) the actions related to the temporary and exceptional reintroduction of border control at internal borders as referred to in Regulation (EU) 2016/399;
- ~~(c) as regards the control of goods:~~
  - ~~(1) actions of which the exclusive aim or effect is control of goods;~~
  - ~~(2) purchase, maintenance or upgrading of equipment, excluding means of transport, of which one of the aims or effects is control of goods;~~
  - ~~(3) other actions under this Regulation of which the primary aim or effect is the control of goods.~~

**(c) the actions of which the primary purpose is customs control.**

Where an emergency situation, as referred to in Article 23, occurs, non-eligible actions referred to in this paragraph may be considered eligible.

**Eligible entities**

- ~~1. The following entities may be eligible:~~
  - ~~(a) legal entities established in any of the following countries:~~
    - ~~(i) a Member State or an overseas country or territory linked to it;~~
    - ~~(ii) third country listed in the work programme under the conditions specified therein.~~
  - ~~(b) any legal entity created under Union law or any international organisation.~~
- ~~2. Natural persons are not eligible.~~
- ~~3. Legal entities established in a third country are exceptionally eligible to participate where this is necessary for the achievement of the objectives of a given action.~~
- ~~4. Legal entities participating in consortia of at least two independent entities, established in different Member States or overseas countries or territories linked to those states or in third countries, are eligible.~~

## CHAPTER II

### FINANCIAL AND IMPLEMENTATION FRAMEWORK

#### SECTION 1

#### COMMON PROVISIONS

##### *Article 6*

##### **General principles**

1. Support provided under this Regulation shall complement national, regional and local interventions, and shall focus on bringing Union added value to the objectives of this Regulation.
2. The Commission and the Member States shall ensure that the support provided under this Regulation and by the Member States is consistent with the relevant activities, policies and priorities of the Union and is complementary to other Union instruments.
3. The instrument shall be implemented in shared, direct or indirect management in accordance with Articles 62 (1)(a), (b) and (c) of the Financial Regulation- (EU, Euratom) 2018/1046.
4. In accordance with point (a) of the second subparagraph of Article 193(2) of Regulation (EU, Euratom) No 2018/1046, taking into account the delayed entry into force of this Regulation and in order to ensure continuity, for a limited period, costs incurred in respect of actions supported under this Regulation under direct management and which have already started may be considered eligible as of 1 January 2021, even if they were incurred before the grant application or the request for assistance was submitted.

## Article 7

### Budget

1. The financial envelope for the implementation of the instrument for the period 2021-2027 shall be EUR-~~8 018~~ **5 241** 000 000 in current prices;
- 2. As a result of the Programme specific adjustment provided for in Article 5 of Council Regulation (EU, Euratom) No XXXX/20XX (the MFF Regulation) the amount referred to in paragraph 1 shall be increased by an additional allocation of EUR 1 000 000 000 in 2018 prices as specified in Annex II to that Regulation.**
- ~~23.~~ The financial envelope shall be used as follows:
  - (a) EUR-~~4 811~~ **3 668** 000-~~000~~ shall be allocated to the programmes implemented under shared management, of which EUR-~~157 200~~ **568** 000 for the Special Transit Scheme referred to in Article-~~16~~ **17**, implemented under shared management;
  - (b) EUR-~~3 207~~ **1 573** 000 000 shall be allocated to the thematic facility.
- 4. The additional allocation referred to in paragraph 2 shall be allocated to the thematic facility.**
- ~~35.~~ Up to 0.52 % of the financial envelope shall be allocated for technical assistance at the initiative of the Commission for the implementation of the instrument.



4. ~~Under~~ **6. In accordance with** the relevant provisions of their **respective** association agreements, arrangements shall be made in order to specify the nature and modalities of the participation **in this Instrument** by countries associated with the implementation, application and development of the Schengen acquis. **As soon as possible after the respective country has notified, in accordance with the relevant association agreement, its decision to accept the contents of this Instrument and to implement it in its internal legal order, the Commission shall submit a recommendation to the Council, under Article 218(3) TFEU, for the opening of negotiations on those arrangements. The Council shall act without delay, on receipt of the recommendation, in deciding to authorise the opening of those negotiations.** The financial contributions from those countries shall be added to the overall resources available from the Union budget **financial envelope** referred to in paragraph 1.
7. **In accordance with Article 21 of Regulation (EU) XX [CPR], up to 5% in total of the initial national allocation from any of the funds of the Common Provisions Regulation under shared management may, at the request of Member States, be transferred to the instrument under direct or indirect management. The Commission shall implement those resources directly in accordance with Article 62(1)(a) of the Financial Regulation or indirectly in accordance with Article 62(1)(c). Those resources shall be used for the benefit of the Member State concerned.**

#### *Article 8*

#### **General provisions on the implementation of the thematic facility**

1. The financial envelope referred to in Article 7(~~23~~)(b) shall be allocated flexibly through the thematic facility using shared, direct and indirect management as set out in work programmes. **Given the internal nature of the Instrument, the thematic facility shall primarily serve internal Union policy in line with the specific objectives in Article 3(2).**

Funding from the thematic facility shall be used for its components:

- (a) specific actions;
- (b) Union actions ~~and~~;
- (c) and emergency assistance.

Technical assistance at the initiative of the Commission shall also be supported from the financial envelope for the thematic facility.

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

**That funding, with the exception of funding used for emergency assistance in accordance with Article 25, shall only support the eligible actions in Annex III.**

3. **The Commission shall engage with civil society organisations and relevant networks, notably in view of preparing and evaluating the work programmes for Union actions financed through the instrument.**

- ~~3.~~ **4.** When funding from the thematic facility is granted in direct or indirect management to Member States, it shall be ensured that ~~selected projects are not~~ affected by a reasoned opinion by the Commission in respect of an infringement **proceedings** under Article 258 TFEU that ~~puts~~**put** at risk the legality and regularity of expenditure or the performance of projects: **shall not be selected.**

- ~~4.~~ ~~When~~ **5. For the purposes of Article 18 and Article 19(2) of Regulation (EU) No .../... [CPR], when** funding from the thematic facility is implemented in shared management, the **Member State shall ensure that, and the** Commission shall, ~~for the purposes of Article 18 and Article 19(2) of Regulation (EU) No .../... [CPR],~~ **assess whether, the foreseen actions** are not affected by a reasoned opinion by the Commission in respect of an infringement **procedure** under Article 258 TFEU **on a matter** that puts at risk the legality and regularity of expenditure or the performance of the ~~projects~~**actions.**

- ~~56.~~ The Commission shall establish the overall amount made available for the thematic facility under the annual appropriations of the Union budget.

- ~~67.~~ The Commission shall **by means of implementing acts** adopt financing decisions as referred to in Article 110 of the Financial Regulation **(EU, Euratom) 2018/1046** for the thematic facility; identifying the objectives and the actions to be supported and specifying the amounts for each of its components, as referred to in paragraph 1. ~~Financing decisions~~ **Those implementing acts** shall set out, where applicable, **be adopted in accordance with the examination procedure referred to in Article 32(3).**
- 8. The Commission shall ensure a fair and transparent distribution of resources among the objectives referred to in Article 3(2). The Commission shall report on the use and the overall amount reserved for blending operations.** **distribution of the thematic facility between its components, including on the support provided to the actions in or in relation to third countries under the Union Actions.**
- ~~79.~~ Following the adoption of a financing decision as referred to in paragraph ~~37~~, the Commission may amend the programmes implemented under shared management accordingly.
- ~~810.~~ The financing decisions may be annual or multiannual and may cover one or more components of the thematic facility.

## SECTION 2

### SUPPORT AND IMPLEMENTATION UNDER SHARED MANAGEMENT

#### *Article 9*

##### **Scope**

1. This section applies to the part of the financial envelope referred to in Article 7(~~23~~)(a), and the additional resources to be implemented under shared management according to the Commission decision for the thematic facility referred to in Article 8.
2. Support under this section shall be implemented under shared management in accordance with Article 63 of the Financial Regulation **(EU, Euratom) 2018/1046** and Regulation (EU) No .../... [CPR].

#### *Article 10*

##### **Budgetary resources**

1. Resources referred to in Article 7(~~23~~)(a) shall be allocated to the national programmes implemented by Member States under shared management ('the programmes') indicatively as follows:
  - (a) EUR-~~4 009 3 057~~ 000 000 to the Member States in accordance with the criteria in Annex I;
  - (b) EUR-~~802- 611~~ 000 000 to the Member States for the adjustment of the allocations for the programmes as referred to in in Article-~~13 14~~(1).
2. Where the amount referred to in paragraph 1(b) is not allocated, the remaining amount may be added to the amount referred to in Article 7(~~23~~)(b).

## Article 11

### Pre-financing

1. In accordance with Article 84(3a) of Regulation EU.../...[CPR], the pre-financing for the Fund shall be paid in yearly instalments before 1 July of each year, subject to the availability of funds, as follows:
  - (a) 2021: 4%;
  - (b) 2022: 3%;
  - (c) 2023: 5%;
  - (d) 2024: 5%;
  - (e) 2025: 5%;
  - (f) 2026: 5%;
2. Where a programme is adopted after 1 July 2021, the earlier instalments shall be paid in the year of adoption.

## *Article ~~11~~12*

### **Co-financing rates**

1. The contribution from the Union budget shall not exceed 75 % of the total eligible expenditure of a project.
2. The contribution from the Union budget may be increased to 90 % of the total eligible expenditure for projects implemented under specific actions.
3. The contribution from the Union budget may be increased to 90 % of the total eligible expenditure for the actions listed in Annex IV.

4. The contribution from the Union budget may be increased to 100 % of the total eligible expenditure for operating support, including the Special Transit Scheme.
- 5. The contribution from the Union budget may be increased to 100% of the total eligible expenditure for projects in line with Article 85(2) or Article 85(3) of Regulation (EU) 2018/1240.**
- ~~56.~~ The contribution from the Union budget may be increased to 100 % of the total eligible expenditure for emergency assistance.
- 7. The contribution from the Union budget may be increased to 100 % of the total eligible expenditure for technical assistance at the initiative of the Member States within the limits set out in Article 30(5)(b)(v) of Regulation (EU) No [CPR].**
- ~~68.~~ The Commission decision approving a programme shall set the co-financing rate and the maximum amount of support from this instrument for the types of action referred to in paragraphs 1 to ~~5-6.~~
- ~~79.~~ For each ~~specific objective~~ **type of action**, the Commission decision **approving a programme** shall set out whether the co-financing rate for the ~~specific objective~~ **type of action** is to be applied to **either of the following**:
- (a) the total contribution, including the public and private contribution, ~~or;~~
  - (b) public contribution only.

## Programmes

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

**Given the internal nature of the Instrument, programmes shall primarily serve internal Union policy in line with the specific objectives in Article 3(2).**

**The Commission shall assess the programmes in accordance with Article 18 of Regulation XXX [CPR].**

- ~~2.~~ **Within the resources allocated in Article 10(1), and without prejudice to paragraph 3 below, each Member State shall allocate in its programme a minimum of 10 % to the specific objective referred to in point (b) of paragraph 2 of Article 3.**
- ~~3.~~ **Member States may depart from this minimum percentage only where a detailed explanation is included in the programme as to why allocating resources below this level does not jeopardise the achievement of the relevant objective.**
- ~~2.4.~~ **The Commission shall ensure that the knowledge and expertise of the relevant decentralised agencies, in particular the European Border and Coast Guard Agency and where appropriate, eu-LISA and the EU Agency for Fundamental Rights, are associated with the process of developing the taken into account as regards the areas of their competence in the development of the Member States' programmes of Member States at an early stage, in so far as it falls within the agencies' competencies. and in a timely manner.**

- ~~3.4.5.~~ **The Commission** shall consult the European Border and Coast Guard Agency on the ~~draft programmes with a specific emphasis on the activities~~ **actions** included under operating support ~~in line with Article 3(2)(a)~~ to ensure consistency and complementarity of the actions of the Agency and those of the Member States regarding border management as well as to avoid double financing and to achieve cost efficiency. **The Commission shall, where necessary, consult eu-LISA on the actions included under operating support for which the agency has particular expertise in accordance with its mandate.**
- ~~4.6.~~ The Commission may associate the European Border and Coast Guard Agency, and, where appropriate, eu-LISA, with **relevant decentralised agencies, including those referred to in paragraph 4, in the** monitoring and evaluation tasks as ~~referred to~~ **specified** in Section 5, in particular in view of ensuring that the actions implemented with the support of the instrument are compliant with the relevant Union *acquis* and agreed Union priorities.
- ~~5.7.~~ Following the adoption of recommendations within the scope of this Regulation in accordance with Regulation (EU) No 1053/2013, and the recommendations issued in the framework of carrying out vulnerability assessments in accordance with Regulation (EU)-2016/1624 **2019/1896**, the Member State concerned shall examine, together with the Commission, the most appropriate approach to address these recommendations with the support of this instrument.
- ~~6.8.~~ The Commission shall, where relevant, associate the European Border and Coast Guard Agency with the process of examination on the most appropriate approach to address the recommendations with the support of this instrument. **In that framework, the Commission may, where relevant, draw on the expertise of other Union agencies on specific issues falling within those agencies' competencies.**
- ~~7.9.~~ When implementing paragraph ~~5.7~~, the Member State concerned shall make the implementation of measures to address any identified deficiencies, especially measures to address serious deficiencies and non-compliant assessments, a priority for its programme.



- ~~8-10.~~ Where necessary, the programme in question shall be amended to take into account the recommendations referred to in paragraph ~~57~~. Depending on the impact of the adjustment, the revised programme may be approved by the Commission: **in line with the procedures set out Article 19 of the [CPR regulation]**.
- ~~911.~~ In cooperation and consultation with the Commission and the European Border and Coast Guard Agency in accordance with the Agency's competencies, the Member State concerned may reallocate resources under its programme, including those programmed for operating support, with the aim of addressing the recommendations referred to in paragraph ~~57~~ which have financial implications.
- ~~10-12.~~ Whenever a Member State decides to implement projects with or in a third country, with the support of the instrument, the Member State concerned shall consult the Commission prior to the ~~start~~**approval** of the project.
- ~~11-13.~~ Whenever a Member State decides to implement actions with, **in** or in **relation to** a third country with the support of the instrument relating to monitoring, detection, identification, tracking, prevention and interception of unauthorised border crossings for the purpose of detecting, preventing and combating ~~illegal~~**irregular** immigration and cross-border crime or contributing to the protection and saving the lives of migrants, it shall ensure that it has notified the Commission of any bilateral or multilateral cooperation agreement with that third country in accordance with Article 20 of Regulation (EU) No 1052/2013.
- ~~12-14.~~ As regards ~~operating~~ equipment, including means of transport, and ~~communication~~**ICT** systems required for effective and secure border control, **including for search and rescue operations**, purchased with the support of this instrument, the following shall apply:

- (a) ~~before~~ **the Member States shall ensure that the standards established in accordance with Articles 16 and 64 of Regulation (EU) 2019/1896 are met when** launching the purchase procedures to acquire operating ~~for the~~ equipment, including means of transport, and communication **and ICT systems to be developed** with the support of the instrument, the Member States shall ensure that this **Instrument. Such** equipment complies with the standards established by the European Border and Coast Guard Agency, where such standards exist, and **ICT systems** shall verify with the European Border and Coast Guard Agency their technical specifications with the aim of ensuring interoperability of the assets used by the European Border and Coast Guard; **be eligible for financial support from this Instrument, only if this requirement was met.**
- (b) all large-scale operating equipment for border management, such as aerial and maritime means of transport and surveillance purchased by the Member States shall be registered in the technical equipment pool of the European Border and Coast Guard Agency in view of making these assets available in accordance with Article ~~39(8)~~ **64(9)** of Regulation (EU) ~~2016/1624~~ **2019/1896**;
- (c) ~~Member States may decide to purchase items for multi-purpose maritime operations supported by the instrument, provided that these items when operated by the relevant national authorities are involved in border surveillance operations at least 60 % of the total period of use for national purposes within a year. These items shall be registered at the technical equipment pool of the European Border and Coast Guard Agency in view of making these assets available in accordance with Article 39(8) of Regulation (EU) 2016/1624;~~ **(c) Equipment and ICT systems, financed under this Instrument, may be additionally used in the following complementary areas: customs control, maritime operations of multipurpose character and for achieving the objectives of the Internal Security Fund established by Regulation (EU) No ../..[ISF] and of the Asylum, Migration and Integration Fund established by Regulation (EU) No ../..[AMIF].**

**Such equipment and ICT systems shall remain available and deployable for effective and secure border control activities.**

**The use of equipment in the mentioned complementary areas shall not exceed 30 % of the total period of use of that equipment.**

**ICT systems developed under this category shall provide data and services to the border management systems at national or EU level.**

**Member States shall inform the Commission in the annual performance report of any such multiple use and the place of deployment for the multi-purpose equipment and ICT systems.**

- (d) in order to support the coherent capability development planning for the European Border and Coast Guard and the possible use of joint procurement, Member States shall communicate to the Commission as part of the reporting in line with Article ~~27~~**29** the available multiannual planning for the equipment expected to be purchased under the instrument. The Commission shall transmit this information to the European Border and Coast Guard Agency.

~~13.~~**16.** Training in the field of border management carried out with the support of this instrument shall be based on the relevant harmonised and quality-assured European education and common training standards for border and coast guarding-, **in particular the common core curricula referred to in Article 62(6) of Regulation (EU) 2019/1896.**

~~14.~~**17.** Member States shall pursue in particular the actions listed in Annex IV. To address unforeseen or new circumstances or to ensure the effective implementation of funding, the Commission shall be empowered to adopt delegated acts in accordance with Article ~~29~~**31** to amend Annex IV.

~~15.~~**18.** Programming as referred to in Article 17(5) of Regulation (EU) No .../...[CPR] shall be based on the types of intervention set out in Table 1 of Annex VI- **and shall include an indicative breakdown of the programmed resources by type of intervention within each specific objective.**

## *Article ~~13~~**14***

### **Mid-term review**

1. In 2024 the Commission shall allocate to the programmes of Member States concerned the additional amount referred to in Article 10(1)(b) in accordance with the criteria referred to in paragraph 1(c) of and in paragraphs 2 to ~~11~~**10** of Annex I. The allocation shall be based on the latest available statistical data for the criteria referred to in paragraph 1(c) and in paragraphs 2 to ~~11~~**10** of Annex I. Funding shall be effective for the period as of the calendar year 2025.
2. If at least 10 % of the initial allocation of a programme referred to in Article 10(1)(a) has not been covered by interim payment applications submitted in accordance with Article 85 of Regulation (EU) No .../... [CPR], the Member State concerned shall not be eligible to receive the additional allocation for its programme referred to in paragraph 1.
3. The allocation of the funds from the thematic facility as from 2025 shall, ~~where appropriate,~~ take into account the progress made in achieving the milestones of the performance framework as referred to in Article 12 of Regulation (EU) No-.../... [CPR] and identified implementation shortcomings.

## *Article ~~14~~**15***

### **Specific actions**

1. Specific actions are transnational or national projects **bringing Union added value** in line with the objectives of this Regulation for which one, several or all Member States may receive an additional allocation to their programmes.
2. Member States may, in addition to their allocation calculated in accordance with Article 10(1), receive funding for specific actions, provided that it is consequently earmarked as such in the programme and is used to contribute to the implementation of the objectives of this Regulation.
3. This funding shall not be used for other actions in the programme except in duly justified circumstances and as approved by the Commission through the amendment of the programme.

### Operating support

1. Operating support is a part of a Member State's allocation which may be used as support to the public authorities responsible for accomplishing the tasks and services which constitute a public service for the Union.
2. A Member State may use up to ~~30~~**33**% of the amount allocated under the instrument to its programme to finance operating support to the public authorities responsible for accomplishing the tasks and services which constitute a public service for the Union.
3. Member States using operating support shall comply with the **relevant** Union ~~acquis on~~  
~~borders and visas~~.
4. Member States shall justify in the programme and in the annual performance reports as referred to in Article ~~27~~**29** the use of operating support to ~~achieve~~**contribute to the**  
**achievement of** the objectives of this Regulation. Before the approval of the programme, the Commission shall, following a consultation of the European Border and Coast Guard Agency, **and where appropriate, eu-LISA**, as regards the Agency's **agencies'**  
competencies in accordance with Article ~~12~~**13**(~~34~~), assess the baseline situation in the Member States which have indicated their intention to use operating support, taking into account the information provided by those Member States and, where relevant, the information available in the light of Schengen evaluations and vulnerability assessments, including the recommendations following Schengen evaluations and vulnerability assessments.
5. Without prejudice to Article ~~45~~(~~34~~)(c), operating support shall be concentrated on ~~specific~~  
~~tasks and services~~**eligible actions** as laid down in Annex VII.
6. To address unforeseen or new circumstances or to ensure the effective implementation of funding, the Commission shall be empowered to adopt delegated acts in accordance with Article ~~29~~**31** to amend the ~~specific tasks and services~~**eligible actions** in Annex VII.

### **Operating support for the Special Transit Scheme**

1. The instrument shall provide support to compensate for foregone fees from visas issued for the purpose of transit and additional costs incurred in implementing the facilitated transit document (FTD) and the facilitated rail transit document (FRTD) scheme in accordance with Regulation (EC) No 693/2003 and Regulation (EC) No 694/2003.
2. The resources allocated to Lithuania for the Special Transit Scheme pursuant to Article 7(~~23~~)(a) shall be made available as additional operating support for Lithuania, **including for investment in infrastructures,** in line with the eligible actions for operating support within the programme, as referred to in Annex VII.
3. By way of derogation from Article ~~15~~16(2), Lithuania may use the amount allocated to it in line with Article 7(~~23~~)(a) to finance operating support in addition to the amount defined in Article ~~15~~16(2).
4. The Commission and Lithuania shall review the application of this Article in the event of changes which have an impact on the existence or functioning of the Special Transit Scheme.
5. **Following a reasoned request by Lithuania, the resources allocated for the Special Transit Scheme referred to in Article 7(3)(a) shall be reviewed, and where necessary adjusted, before the adoption of the last work programme for the thematic facility, within the limits of the budgetary resources referred to in Article 7(3)(b), through the thematic facility referred to in Article 8.**

## Article 18

### Control and audit of projects carried out by international organisations

1. This Article applies to international organisations or their agencies as referred to in Article 62 (1) (c) (ii) of Regulation (EU, Euratom) No 2018/1046 (the ‘Financial Regulation’) whose systems, rules and procedures have been assessed ex ante as appropriate by the Commission pursuant to Article 154 (4) and (7) of that Regulation for the purpose of indirectly implementing grants financed from the Union budget, hereinafter referred to as ‘international organisations’.
2. Without prejudice to Article 77 (a) [CPR] and to Article 129 of the Financial Regulation, where the international organisation is a beneficiary, the managing authority is not required to carry out the management verifications referred to in Article 68 (1)(a) [CPR] provided that the international organisation submits to the managing authority the documents required by Article 155 (1) (a), (b) and (c) of the Financial Regulation.
3. Without prejudice to Article 155 (1) (c) of the Financial Regulation, the management declaration shall confirm that the project complies with applicable law and the conditions for support of the project.
4. In addition, where costs are to be reimbursed pursuant to Article 48(1)(a) [CPR], the management declaration shall confirm that:
  - a) the verification of invoices and proof of their payment by the beneficiary has been carried out;
  - b) verification of the accounting records or accounting codes maintained by the beneficiary for transactions linked to the expenditure declared to the managing authority has been carried out.
5. Where the costs are to be reimbursed pursuant to points (b), (c) and (d) of Article 48(1) [CPR], the management declaration shall confirm that the conditions for reimbursement of expenditure have been met.

- 6. The documents referred to in Article 155 (1) (a) and (c) of the Financial Regulation shall be provided to the managing authority together with each payment claim submitted by the beneficiary.**
- 7. The beneficiary shall submit to the managing authority annually and not later than 15 October the accounts accompanied by an opinion of an independent audit body, drawn up in accordance with internationally accepted audit standards. This opinion shall establish whether the control systems put in place function properly and are cost-effective, and whether the underlying transactions are legal and regular. The opinion shall also state whether the audit work puts in doubt the assertions made in the management declarations, including information on suspicion of fraud. It shall provide assurance on the expenditure included in the payment claims submitted by the international organisation to the managing authority.**
- 8. Without prejudice to existing possibilities for carrying out further audits referred to in Article 127 of the Financial Regulation, the managing authority shall draw up the management declaration referred to in Article 68 (1)(f) [CPR] based on these documents, instead of relying on the management verifications referred to in Article 68 (1) [CPR].**
- 9. The document setting out the conditions for support referred to in Article 67(4) [CPR] shall include the requirements set out in this Article.**
- 10. Paragraph 2 shall not apply where:**
- a) the managing authority identifies a specific risk of irregularity or an indication of fraud with respect to a project initiated or implemented by the international organisation;**
  - b) the international organisation fails to submit to the managing authority the documents listed in paragraph 2;**
  - c) the documents listed in paragraph 2 and submitted by the international organisation are incomplete.**



- 11. Where a project initiated or initiated and implemented by an international organisation is part of a sample referred to in Article 73 [CPR], the audit authority may perform its work based on a sub-sample of transactions within this project. Where errors are found in the sub-sample, the audit authority, if relevant, may request the auditor of the international organisation to assess the full scope and the total amount of errors.**

## SECTION 3

### SUPPORT AND IMPLEMENTATION UNDER DIRECT AND INDIRECT MANAGEMENT

#### Article 19

#### Eligible entities

**1. The following entities are eligible:**

**(a) legal entities established in any of the following countries:**

**(i) a Member State or an overseas country or territory linked to it;**

**(ii) a third country listed in the work programme, under the conditions specified in paragraph (3).**

**(b) any legal entity created under Union law or any international organisation relevant for the purposes of the Fund.**

**2. Natural persons are not eligible.**

**3. Entities referred to in paragraph (1)(a)(ii), above, shall participate as part of a consortium with at least two independent entities at least one of which is established in a Member State.**

**Those entities shall ensure that the actions in which they participate are in compliance with the principles enshrined in the Charter of Fundamental Rights of the European Union and contribute to the achievement of the objectives of the Fund as laid down in Article 3 of this Regulation.**

#### Article 17~~20~~

#### Scope

Support under this section shall be implemented either directly by the Commission in accordance with point (a) of Article 62(1) of the Financial Regulation **(EU, Euratom) 2018/1046**, or indirectly in accordance with point (c) of that Article.

## *Article 18*~~21~~

### **Union actions**

1. Union actions are transnational projects or projects of particular interest to the Union, in line with the objectives of this Regulation.
2. At the Commission's initiative, the instrument may be used to finance Union actions concerning the objectives of this Regulation as referred to in Article 3 and in accordance with Annexes II and III.
3. Union actions may provide funding in any of the forms laid down in ~~the Financial Regulation~~ **(EU, Euratom) 2018/1046**, in particular grants, prizes and procurement. ~~They may also provide financing in the form of financial instruments within blending operations.~~
4. Grants implemented under direct management shall be awarded and managed in accordance with ~~{Title VIII} of the Financial Regulation-~~ **(EU, Euratom) 2018/1046**.
5. The evaluation committee assessing the proposals may be composed of external experts.
6. Contributions to a mutual insurance mechanism may cover the risk associated with the recovery of funds due by recipients and shall be considered a sufficient guarantee under ~~the Financial Regulation~~ **(EU, Euratom) 2018/1046**. The provisions laid down in [Article X] of Regulation (EU) No .../... [Successor of the Regulation on the Guarantee Fund] shall apply.

## *Article 19*

### **Blending operations**

~~Blending operations decided under this instrument shall be implemented in accordance with the [InvestEU Regulation] and [Title X] of the Financial Regulation.~~

*Article ~~20~~22*

**Technical assistance at the level of the Commission**

~~The~~ **In accordance with Article 29 of Regulation (EU) No [CPR], the** instrument may support technical assistance ~~measures~~ implemented at the initiative of, or on behalf of, the Commission-  
~~Those measures may be financed at the~~ **a financing** rate of 100%.

*Article ~~21~~23*

**Audits**

Audits on the use of the Union contribution carried out by persons or entities, including by other than those mandated by the Union institutions or bodies, shall form the basis of the overall assurance pursuant to Article 127 of the Financial Regulation **(EU, Euratom) 2018/1046**.

*Article ~~22~~24*

**Information, communication and publicity**

1. The ~~recipients~~**recipient** 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, **meaningful** and proportionate ~~targeted~~ information to multiple audiences, including the media and the public. **Visibility shall be ensured and information shall be provided except in duly justified cases where public display is not possible or appropriate or information is restricted by law in particular due to reasons of security, public order, criminal investigations or the protection of personal data. To ensure the visibility of Union funding, recipients of Union funding should refer to its origin when communicating on the action and display the Union emblem.**
2. ~~The~~**To reach the widest possible audience,** Commission shall implement information and communication actions relating to this instrument, its actions and results. Financial resources allocated to this instrument shall also contribute to the corporate communication on the political priorities of the Union, as far as they are related to the objectives of this Regulation.

- 3. The Commission shall publish the programmes of the thematic facility. For support provided under direct and indirect management, the Commission shall publish the information referred to in Article 38(2) of Regulation (EU, Euratom) 1046/2018 on a publicly available website and shall update that information regularly. This information shall be published in open, machine-readable format which allows data to be sorted, searched, extracted and compared.**

## SECTION 4

### SUPPORT AND IMPLEMENTATION UNDER SHARED, DIRECT AND INDIRECT MANAGEMENT

#### *Article ~~23~~25*

##### **Emergency assistance**

1. The instrument shall provide financial assistance to address urgent and specific needs in the event of ~~an~~ **a duly justified** emergency situation ~~resulting from an urgent and exceptional pressure where a large or disproportionate number of third-country nationals have crossed, are crossing or are expected~~ **as defined in point 7 of Article 2.**

~~**In response** to cross the external borders of one or more Member States, in particular at border sections where the impact level has been identified as such that it jeopardises the functioning of the whole Schengen area, or any other~~ **a duly justified emergency** situation of urgent and exceptional pressure, **the Commission may decide to provide emergency assistance** within the scope of this Regulation that requires immediate action. **limits of available resources.**

2. Emergency assistance may take the form of grants awarded directly to the decentralised agencies.
3. Emergency assistance may be allocated to Member States' programmes in addition to their allocation calculated in accordance with Article 10(1), provided that it is consequently earmarked as such in the programme. This funding shall not be used for other actions in the programme except in duly justified circumstances and as approved by the Commission through the amendment of the programme. **Pre-financing for emergency assistance may amount to 95% of the Union contribution, subject to the availability of funds.**
4. Grants implemented under direct management shall be awarded and managed in accordance with {Title VIII} of the Financial Regulation **(EU, Euratom) 2018/1046.**

5. Where necessary for the implementation of the action, emergency assistance may cover expenditure which was incurred prior to the date of submission of the grant application or the request for assistance, but not prior to 1 January 2021.
6. Emergency assistance shall be provided in a manner entirely consistent with the relevant Union *acquis* and with the Union's and the Member States' obligations under the international instruments to which they are party.
7. The Commission may, on duly justified imperative grounds of urgency and to ensure a timely availability of resources for emergency assistance, separately adopt a financing decision for emergency assistance by way of immediately applicable implementing acts in accordance with the examination procedure referred to in Article 32(4).

*Article ~~24~~26*

**~~Cumulative, complementary and combined funding~~Alternative Funding**

1. An action that has received a contribution under the instrument may also receive a contribution from any other Union programme, including Funds under shared management, provided that the contributions do not cover the same costs. The rules of 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.
2. Actions awarded a seal of Excellence certification, ~~or which comply~~ **under this instrument by complying** with the following cumulative ~~comparable~~ **comparative** conditions:
  - (a) they have been assessed in a call for proposals under the instrument;
  - (b) they comply with the minimum quality requirements of that call for proposals;

- (c) they may not be financed under that call for proposals due to budgetary constraints, may receive support from the European Regional Development Fund, ~~the Cohesion Fund,~~ ~~the European Social Fund~~ or the European Agricultural Fund for Rural Development, **Social Fund**, in accordance with paragraph 5 of Article [67] of Regulation (EU) No .../... [CPR] and Article 8 of ... **Common Provisions** Regulation (EU) No .../... [Financing, management and monitoring of the Common Agricultural Policy], provided that such actions are consistent with the objectives of the programme concerned. The rules of the Fund or instrument providing support shall apply. L



## SECTION 5

### MONITORING, REPORTING AND EVALUATION

#### Sub-section 1

#### Common provisions

#### *Article ~~25~~27*

#### Monitoring and reporting

1. In compliance with its reporting requirements pursuant to Article ~~43~~41(3)(h)(i)(iii) of the ~~Financial Regulation~~ (EU, Euratom) 2018/1046, the Commission shall present to the European Parliament and the Council information on performance in accordance with Annex V.
2. The Commission shall be empowered to adopt delegated acts in accordance with Article ~~29~~31 to amend Annex V in order to make the necessary adjustments to the information on performance to be provided to the European Parliament and the Council.
3. The indicators to report on progress of the instrument towards the achievement of the objectives of this Regulation are set out in Annex VIII. For output indicators, baselines shall be set at zero. The milestones set for 2024 and targets set for 2029 shall be cumulative.
- 4. The Commission shall also report on the use and share of the thematic facility for supporting actions in or in relation to third countries.**
- 45.** The performance reporting system shall ensure that data for monitoring programme implementation and results are collected efficiently, effectively, and in a timely manner. To that end, proportionate reporting requirements shall be imposed on recipients of Union funds and, where relevant, the Member States.

56. In order to ensure effective assessment of the progress of the instrument towards the achievement of its objectives, the Commission shall be empowered to adopt delegated acts in accordance with Article 2931 to amend Annex VIII to review and complement the indicators where necessary and to supplement this Regulation with provisions on the establishment of a monitoring and evaluation framework, including information to be provided by the Member States. **Any amendment to Annex VIII shall apply only to projects selected after its entry into force.**

## *Article 2628*

### **Evaluation**

1. The **By 31 December 2024, the** Commission shall carry out a mid-term and a retrospective evaluation of this Regulation, ~~including the actions implemented under this instrument.~~ **In addition to Article 40(1) of the Regulation [CPR], the mid-term evaluation shall assess the following:**
  - (a) **the effectiveness of the instrument, including the progress made towards the achievement of the objectives of this Regulation, taking into account all relevant information already available, in particular the annual performance reports referred to in Article 29 and the output and result indicators set out in Annex VIII;**
  - (b) **the efficiency of the use of resources allocated to the Instrument and of the management and control measures put in place to implement it;**
  - (c) **the continued relevance and appropriateness of the implementation measures set out in Annex II;**
  - (d) **the coordination, coherence and complementarity between the actions supported under the instrument and support provided by other Union funds;**

**(e) the EU added value of actions implemented under the instrument.**

**That mid-term evaluation shall take into account retrospective evaluation results on the effects of the Internal Security Fund – Borders and Visa Instrument for the period 2014-2020.**

**2. In addition to Article 40(2) of the Regulation [CPR], the retrospective evaluation shall include the elements listed in paragraph 1. In addition, the impacts of the instrument shall be evaluated.**

**2.3. The mid-term and the retrospective evaluation shall be carried out in a timely manner to feed into the decision-making process in accordance with the timeline set out Article 40, including, where appropriate, revisions of this Regulation (EU) No .../... [CPR].**

**4. The Commission shall ensure that information in the evaluations will be publicly available, except in duly justified cases, where information is restricted by law, in particular due to reasons of the functioning or security of the external borders as part of the European integrated border management, security, public order, criminal investigations or the protection of personal data.**

**5. In its mid-term and retrospective evaluations, the Commission shall pay particular attention to the evaluation of actions by, in or in relation to third countries in accordance with Article 5 and Article 13(12) and (13).**

## Sub-section 2

### Rules for shared management

#### *Article 27***29**

#### Annual performance reports

1. By 15 February 2023 and by the same date of each subsequent year up to and including 2031, Member States shall submit to the Commission the annual performance report as referred to in Article 36(6) of Regulation (EU) No .../... **.../2021 [Common Provisions Regulation]**.

**The reporting period shall cover the last accounting year as defined in Article 2(28) of Regulation (EU) .../... [CPR], preceding the year of submission of the report.** The report submitted in **on 15 February 2023** shall cover the implementation of the programme carried out until 30 June 2022 **period from 1 January 2021**.

2. The annual performance report shall in particular set out information on:
  - (a) ~~the~~ progress in the implementation of the programme and in achieving the milestones and targets, taking into account the latest data as required by Article 37 of Regulation (EU) No .../... **.../2021** [CPR];
  - (b) any issues affecting the performance of the programme and the ~~actions~~ **action** taken to address them; **including information on any reasoned opinion issued by the Commission in respect of an infringement under Article 258 TFEU linked to the implementation of the Instrument;**
  - (c) the complementarity between the actions supported by the **under this** instrument and **the** support provided by other Union Funds **funds**, in particular those in or in relation to third countries;

- (d) the contribution of the programme to the implementation of the relevant Union *acquis* and action plans;
- (e) the implementation of communication and visibility actions;
- (f) the fulfilment of the **applicable** enabling conditions and their application throughout the programming period, **in particular compliance with fundamental rights;**

**(g) the level of expenditure in line with Article 85(2) and 85(3) of Regulation (EU) 2018/1240 included in the accounts pursuant to the Article 92 of the Regulation [CPR];**

**(h) the implementation of projects in, or in relation to a third country.**

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

3. The Commission may make observations on the annual performance report within two months of the date of its receipt. Where the Commission does not provide observations ~~within~~**by** that deadline, the ~~reports~~**report** shall be deemed to have been accepted.

**4. On its website, the Commission shall provide the links to Member States' websites referred to in Art. 44(1) [CPR].**

- ~~45.~~ In order to ensure uniform conditions for the implementation of this Article, the Commission shall adopt an implementing act establishing the template for the annual performance report. This implementing act shall be adopted in accordance with the advisory procedure referred to in Article-~~30~~ **32**(2).

*Article ~~28~~30*

**Monitoring and reporting under shared management**

1. Monitoring and reporting in accordance with Title IV of Regulation (EU) No .../... [CPR] shall be based on the types of intervention set out in Tables 1, 2, ~~3~~3 and ~~3~~4 in Annex VI. To address unforeseen or new circumstances or to ensure the effective implementation of the funding, the Commission shall be empowered to adopt delegated acts to amend Annex VI in accordance with Article ~~29~~31.
2. The ~~common~~ indicators **set in Annex VIII** shall be used in accordance with Articles 12(1), 17 and ~~37~~ of Regulation (EU) No ~~.../...~~ .../... [CPR].

## CHAPTER III

### TRANSITIONAL AND FINAL PROVISIONS

#### *Article ~~29~~31*

##### **Exercise of the delegation**

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.
2. The power to adopt delegated acts referred to in Articles ~~12, 15, 25~~5, 13, 16, 27 and ~~28~~30 shall be conferred on the Commission until 31 December ~~2028~~2027.
3. The European Parliament or the Council may revoke the delegation of powers referred to in Articles ~~12, 15, 25~~5, 13, 16, 27 and ~~28~~30 at any time. A decision of revocation shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.
4. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement on Better Law-Making of 13 April 2016.
5. As soon as it adopts a delegated act, the Commission shall simultaneously notify the European Parliament and the Council thereof.
6. A delegated act adopted pursuant to Articles ~~12, 15, 25~~5, 13, 16, 27 and ~~28~~30 shall enter into force only if neither the European Parliament nor the Council has expressed an objection within two months of being notified of it if, before the expiry of that period, they 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 the Council.

*Article ~~30~~32*

**Committee procedure**

1. The Commission shall be assisted by ~~at the~~ Coordination Committee for the Asylum, and Migration **and Integration** Fund, the Internal Security Fund and the ~~instrument for border management~~**Border Management** and visa**Visa Instrument**. That Committee shall be a Committee within the meaning of Regulation (EU) No 182/2011.
2. Where reference is made to this paragraph, Article 4 of Regulation (EU) No 182/2011 shall apply.
- 3. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply. Where the Committee delivers no opinion, the Commission shall not adopt the draft implementing act and the third subparagraph of Article 5(4) of Regulation (EU) No 182/2011 shall apply.**
- 4. Where reference is made to this paragraph, Article 8 of Regulation (EU) No 182/2011 shall apply.**

**Immediately applicable implementing acts adopted pursuant to this paragraph shall remain in force for a period of 18 months**

- ~~3. Where the Committee delivers no opinion, the Commission shall not adopt the draft implementing act. This shall not apply to the implementing act referred to in Article 27(4).~~

*Article ~~31~~33*

**Transitional provisions**

1. This Regulation shall not affect the continuation or modification of the actions concerned under the instrument for external borders and visa as part of the Internal Security Fund for the period 2014-2020, established by Regulation (EU) No 515/2014, which shall continue to apply to those actions until their closure.



2. The financial envelope for the instrument may also cover technical and administrative assistance expenses necessary to ensure the transition between the instrument and the measures adopted under its predecessor, the instrument for external borders and visa as part of the Internal Security Fund for the period 2014-2020, as established by Regulation (EU) No 515/2014.

**3. Where Member States continue after 1 January 2021 to support a project selected and started under Regulation (EC) No 515/2014 , in accordance with Regulation 514/2014, they shall ensure that the following cumulative conditions are met:**

**(a) the project so selected has two phases identifiable from a financial point of view with separate audit trails;**

**(b) the total cost of the project exceeds EUR 2 500 000;**

**(c) payments made by the responsible authority to beneficiaries for the first phase of the project shall be included in payment requests to the Commission under Regulation (EU) 514/2014. Expenditure for the second phase of the project shall be included in payment applications under Regulation (EU) [CPR];**

**(d) the second phase of the project complies with the applicable law and is eligible for support from the instrument under this Regulation and Regulation [CPR];**

**(e) the Member State commits to complete the project, render it operational and report it in the annual performance report submitted by 15 February 2024.**

**The provisions of this Regulation and Regulation [CPR] shall apply to the second phase of the project.**

**This paragraph shall apply only to projects, which have been selected under shared management pursuant to Regulation (EU) 514/2014.**

*Article ~~32~~34*

**Entry into force and application**

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

It shall apply from 1 January 2021.

This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaties.

Done at Brussels,

*For the European Parliament*

*For the Council*

*The President*

*The President*

## ANNEX I

### Criteria for the allocation of funding to the programmes under shared management

1. The available resources referred to in Article 10 shall be broken down between the Member States as follows:
  - (a) each Member State shall receive a fixed amount of EUR ~~58~~ 000 000 **in current prices** from the instrument at the start of the programming period only, **with the exception of Cyprus, Malta and Greece who shall receive a fixed amount of EUR 28 000 000 in current prices;**
  - (b) an amount of EUR ~~157-200~~ **568** 000 for the Special Transit Scheme to be allocated to Lithuania at the start of the programming period only;
  - (c) and the remaining resources referred to in Article 10 shall be distributed based on the following criteria:
    - 30 % for external land borders;
    - 35 % for external sea borders;
    - 20 % for airports;
    - 15 % for consular offices.
2. The resources available under paragraph 1(c) for external land borders and external sea borders **as referred to in Article 2(3)** shall be broken down between Member States as follows:

- (a) 70 % for the **weighted** length of their external land borders and external sea borders, ~~which will.~~ **The weighted length shall** be calculated, ~~on established by~~ the ~~basis~~**application** of ~~the~~ weighting factors **referred to in paragraph 10** for each specific section as defined in **Article 2(11) of Regulation (EU) No 1052/2013**<sup>61</sup>, ~~determined in accordance with paragraph 11~~**2019/1896**<sup>62</sup>; and
- (b) 30 % for the workload at their external land and external sea borders, as determined in accordance with paragraph ~~76~~**76**(a).

~~3. The weighting as referred to in paragraph 2(a) shall be determined by the European Border and Coast Guard Agency in accordance with paragraph 11.~~

~~43.~~ The resources available under paragraph 1(c) for airports shall be broken down between Member States according to the workload at their airports, as determined in accordance with paragraph ~~76~~**76**(b).

~~54.~~ The resources available under paragraph 1(c) for consular offices shall be broken down between Member States as follows:

- (a) 50 % for the number of consular offices (excluding honorary consulates) of the Member States in the countries listed in Annex I ~~of Council~~**to Regulation (EC) No 539/2001****EU** **2018/1806**<sup>63</sup>, and
- (b) 50 % for the workload as regards the management of visa policy at consular offices of Member States in the countries listed in Annex I to Regulation ~~(EC) No 539/2001~~**EU** **2018/1806**, as determined in accordance with paragraph ~~76~~**76**(c) of this Annex.

<sup>61</sup> ~~Regulation (EU) No 1052/2013 of 22 October 2013 establishing the European Border Surveillance System (Eurosur), (OJ L 295, 6.11.2013, p.11.~~

<sup>62</sup> **Regulation (EU) No 1896/2019 of 13 November 2019 on the European Border and Coast Guard and repealing Regulation (EU) No 1052/2013 and (EU) 2016/1624 (OJ L 295, 14.11.2019, p.1).**

<sup>63</sup> ~~Council Regulation (EC) No 539/2001 of 15 March 2001 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement~~ **Regulation (EU) 2018/1806 of the European Parliament and of the Council of 14 November 2018 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement, (OJ L 303, 28.11.2018, p. 39).**

- ~~65.~~ For the purpose of the distribution of resources under paragraph 1(c), ‘external sea borders’ shall mean the outer limit of the territorial sea of the Member States as defined in accordance with Articles 4 to 16 of the United Nations Convention on the Law of the Sea. However, in cases where long range operations **outside the outer limit of the territorial sea of the Member States have been carried out in high threat areas** on a regular basis ~~are required~~ in order to prevent ~~illegal~~ **irregular** immigration or illegal entry, this shall be ~~the outer limit of high threat areas~~ **taken into account for the purposes of defining ‘external sea borders’**. The definition of ‘external ~~maritime~~ **sea** borders’ in this regard shall be determined by taking into account the operational data over the past two years as provided by the Member States concerned ~~and as assessed by the EBCGA for the purposes of the report referred to in paragraph 9.~~ This definition shall be used exclusively for the purpose of this Regulation.
- ~~76.~~ For the purposes of the initial allocation of funding, the assessment of the workload shall be based on the latest average figures covering the ~~preceding 36 months available on the date of the applicability of this Regulation.~~ **years 2017, 2018 and 2019.** For the purposes of the mid-term review, the assessment of the workload shall be based on the latest average figures covering the ~~preceding 36 months available at the time of~~ **years 2021, 2022 and 2023 prior to** the mid-term review in 2024. The assessment of the workload shall be based on the following factors:
- (a) at external land borders and external sea borders:
- (1) 70 % for the number of crossings of the external border at authorised border crossing points;
  - (2) 30% for the number of third-country nationals refused entry at the external border.
- (b) at airports:
- (1) 70 % for the number of crossings of the external border at authorised border crossing points;
  - (2) 30% for the number of third-country nationals refused entry at the external border.

(c) at consular offices:

the number of visa applications for short stays or airport transit.

**87.** The reference figures for the number of consular offices as referred to in paragraph **54(a)** shall be calculated ~~according to~~ **on the basis of** the information ~~contained in Annex 28 of~~ **notified to the** Commission Decision C(2010) 1620 **in accordance with Article 40(4)** of 19 March 2010 establishing the Handbook for the processing of visa applications and the ~~modifications of issued visas~~ **Regulation (EC) No 810/2009**<sup>64</sup>.

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

**98.** The reference figures for the workload referred to:

- (a) in paragraph **76(a)(1)** and **76 (b)(1)** shall be the latest statistics provided by Member States in accordance with Union law;
- (b) in paragraph **76(a)(2)** and **76 (b)(2)** shall be the latest statistics produced by the Commission (Eurostat) on the basis of data provided by Member States in accordance with Union law;
- (c) in paragraph **76(c)** shall be the latest visa statistics published by the Commission in accordance with Article 46 of the Visa Code<sup>65</sup>.
- (d) Where Member States have not provided the statistics concerned, the latest available data for those Member States shall be used. Where there is no data available for a Member State, the reference figure shall be zero.

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<sup>64</sup> **Regulation (EC) No 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas (Visa Code) (OJ L 243, 15.9.2009, p. 1).**

<sup>65</sup> Regulation (EC) No 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas (Visa Code) (OJ L 243, 15.9.2009, p. 1).

~~109.~~ The European Border and Coast Guard Agency shall provide the Commission with a report on the breakdown of resources as regards external land borders, external sea borders and airports, as referred to in paragraph 1(c). **Parts thereof may be classified where appropriate, in accordance with Article 92 of Regulation 2019/1896. After consultation of the Commission, the European Border and Coast Guard Agency shall make a non-classified version of the report publicly available.**

~~110.~~ For the purposes of the initial allocation, the report referred to in paragraph ~~109~~ shall identify the average **impact** level ~~of threat-offor~~ each border section based on the latest average figures covering the ~~preceding 36 months on the date of the applicability of this Regulation.~~ **years 2017, 2018 and 2019.** For the purposes of the mid-term review, the report referred to in paragraph ~~109~~ shall identify the average **impact** level ~~of threat-offor~~ each border section based on the latest average figures covering the ~~preceding 36 months available at the time of~~ **years 2021, 2022 and 2023 prior** the mid-term review in 2024. It shall determine the following specific weighting factors per section applying the ~~threat~~**impact** levels as ~~defined~~**determined** in **accordance with Article 34(1) of** Regulation (EU) No ~~1052/2013~~**2019/1896**:

- (a) factor ~~0.5~~**1** for low ~~threat~~**impact level**;
- (b) factor 3 for medium ~~threat~~**impact level**;
- (c) factor 5 for high ~~threat~~**and critical impact level**;
- ~~(d) factor 8 for critical threat.~~

## ANNEX II

### Implementation measures

1. The instrument shall contribute to the specific objective set out in Article 3(2)(a) by focusing on the following implementation measures:
  - (a) improving border control in line with Article ~~4~~ **3(1)**(a) of Regulation (EU) ~~2016/1624~~ **2019/1896** by:
    - i. reinforcing the capacities for carrying out checks and surveillance at the external borders, including measures to ~~prevent~~ **facilitate legitimate border crossings** and ~~detect~~, **where appropriate: measures related to the prevention and detection of** cross-border crime, ~~such as~~ **at the external borders, in particular** migrant smuggling, trafficking in human beings, and terrorism; **measures related to the management of continuously high levels of migration at the EU's external borders, including through technical, operational reinforcement and mechanisms and procedures for the identification of vulnerable persons and unaccompanied minors, and for the identification of persons who are in need of international protection or wish to apply for such protection, the provision of information to such persons, and the referral of such persons;**
    - ~~ii.~~ **ii.** supporting search and rescue in the context of carrying out border surveillance at sea;
    - ~~iii.~~ **ii.** implementing technical and operational measures within the Schengen area which are related to border control; **while safeguarding the free movement of persons within it.**
    - ~~iv.~~ **iii.** carrying out analyses of the risks for internal security and analyses of the threats that may affect the functioning or security of the external borders;
    - ~~v.~~ supporting, within the scope of this Regulation, Member States facing existing or potential disproportionate migratory pressure at the EU's external borders, including through technical and operational reinforcement, as well as by deploying migration management support teams in hotspot areas.



- (b) ~~further~~ developing the European Border and Coast Guard, ~~through~~ **by supporting national authorities responsible for border management to pursue measures related to capability development and** common capacity building, joint procurement, establishment of common standards and any other measures streamlining the cooperation and coordination between the Member States and the European Border and Coast Guard Agency;
- (c) enhancing inter-agency cooperation at national level among the national authorities responsible for border control or for tasks carried out at the border, and at EU level between the Member States, or between the Member States, on the one hand, and the relevant Union bodies, offices and agencies or third countries, on the other;
- (d) ensuring the uniform application of the Union *acquis* on external borders, including through the implementation of recommendations from quality control mechanisms such as the Schengen evaluation mechanism in line with Regulation (EU) No 1053/2013, vulnerability assessments in line with Regulation (EU) ~~2016/1624~~ **2019/1896**, and national quality control mechanisms;

(e) setting up, operating and maintaining large-scale IT systems pursuant to Union law in the area of border management, in particular the Schengen Information System (SIS II), the European Travel Information and Authorisation System (ETIAS), the Entry-exit System (EES), and Eurodac for border management purposes as well as including the interoperability of these large-scale IT systems and their communication infrastructure, and actions to enhance data quality and the provision of information;

(f) increasing capacity to render assistance to persons in distress at sea and supporting search and rescue operations in situations that may arise during a border surveillance operation at sea;

(g) supporting search and rescue in the context of carrying out border surveillance at sea.

2. The instrument shall contribute to the specific objective set out in Article 3(2)(b) by focusing on the following implementation measures:

(a) providing efficient and client-friendly services to visa applicants while maintaining the security and integrity of the visa procedure; and fully respecting the human dignity and the integrity of the applicant or of the visa holder in accordance with Article 7(2) of Regulation (EC) No 767/2008 of the European Parliament and of the Council of 9 July 2008 concerning the Visa Information System (VIS) and the exchange of data between Member States on short-stay visas;

(b) supporting Member States in issuing visas, including visas with limited territorial validity as referred to in Article 25 of Regulation (EC) No 810/2009 on humanitarian grounds, for reasons of national interest or because of international obligations;

(bc) ensuring the uniform application of the Union acquis on visas, including the further development and modernisation of the common policy on visas;

(ed) developing different forms of cooperation between Member States in visa processing;

(~~de~~) setting up, operating and maintaining large-scale IT systems pursuant to Union law in the area of the common policy on visas, in particular the Visa Information System (VIS) including the interoperability ~~between~~of these large-scale IT systems and their communication infrastructure-, and actions to enhance data quality and the provision of information;

## ANNEX III

### Scope of support

1. Within the specific objective referred to in Article 3(2)(a), the instrument shall in particular support the following:
  - (a) infrastructures, buildings, systems and services required at border crossing points, ~~in hotspot areas and for border surveillance between border crossing points to prevent and tackle unauthorised border crossings, illegal immigration and cross-border crime at the external borders, as well as to guarantee the smooth flows of legitimate travellers;~~
  - (b) operating equipment, including means of transport; and ~~communication~~ **ICT** systems, required for effective and secure border control **at border crossing points and for border surveillance**, in accordance with standards developed by the European Border and Coast Guard Agency, where such standards exist;
  - (c) training in the field of or contributing to the development of European integrated border management, taking into account operational needs and risk analysis ~~and~~, **including challenges identified in the recommendations mentioned in Article 13(7)**, in full compliance with fundamental rights;
  - (d) secondment of joint liaison officers to third countries as defined in Regulation (EU) No .../... ~~[new ILO Regulation]~~ **2019/1240**<sup>66</sup> and secondment of border guards and other relevant experts to Member States or from a Member State to a third country, reinforcement of cooperation and operational capacity of networks of experts or liaison officers, as well as exchange of best practices and boosting the capacity of European networks to assess, promote, support and develop Union policies;

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<sup>66</sup> **OJ L 198, 25-7-2019, p. 88.**

- (e) **exchange of best practices and expertise**, studies, pilot projects, and other relevant actions aiming to implement or develop European integrated border management, including measures aiming at the development of the European Border and Coast Guard, such as common capacity-building, joint procurement, establishment of common standards and other measures streamlining the cooperation and coordination between the European Border and Coast Guard Agency and Member States; **as well as measures related to the referral of vulnerable persons in need of assistance and persons who are in need of, or wish to apply for, international protection;**
- (f) actions developing innovative methods or deploying new technologies with a potential for transferability to other Member States, in particular deploying the results of security research projects where such deployment has been identified by the European Border and Coast Guard Agency, acting under Article ~~37~~ **66** of Regulation (EU) ~~2016/1624~~, **.../2019 [EBCG]**, as contributing to the development of operational capabilities of the European Border and Coast Guard;
- (g) preparatory, monitoring, administrative and technical activities, required to implement external border policies, including to strengthen the governance of the Schengen area by developing and implementing the evaluation mechanism as established by Regulation (EU) No 1053/2013 to verify the application of the Schengen *acquis* and the Schengen Borders Code, including mission expenditure for experts of the Commission and the Member States participating in on-site visits as well as measures to implement recommendations issued following vulnerability assessments carried out by the European Border and Coast Guard Agency in line with Regulation (EU) 2016/1624;
- (h) actions to enhance the quality of data stored in ICT systems and improve the exercise of a data subject's right to information, access to, rectification, erasure and restriction of data processing of his or her personal data;**
- ~~(h)~~ **(i)** identification, fingerprinting, registration, security checks, debriefing, provision of information, medical and vulnerability screening and, where necessary, medical care as well as referral of third country nationals to the appropriate procedure at the external borders, ~~in particular in hotspot areas;~~

(i) actions aimed at enhancing awareness of external border policies among stakeholders and the general public, including corporate communication on the political priorities of the Union;

(j) development of statistical tools, methods and indicators; **observing the principle of non-discrimination;**

(k) operating support for the implementation of European integrated border management.

2. Within the specific objective referred to in Article 3(2)(b), the instrument shall in particular support the following:

(a) infrastructures and buildings required for the processing of visa applications and consular cooperation, including security measures, as well as other actions aimed at improving the quality of service for visa applicants;

(b) operating equipment and ~~communication~~ **ICT** systems required for the processing of visa applications and consular cooperation;

(c) training of consular and other staff contributing to the common visa policy and consular cooperation;

(d) the exchange of best practices and experts, including the secondment of experts, as well as boosting the capacity of European networks to assess, promote, support and further develop Union policies and objectives;

(e) studies, pilot projects and other relevant actions, such as actions aimed at improving knowledge through analyses, monitoring and evaluation;

(f) actions developing innovative methods or deploying new technologies with a potential for transferability to other Member States, especially projects aiming at testing and validating the outcome of Union-funded research projects;

- (g) preparatory, monitoring, administrative and technical activities, including to strengthen the governance of the Schengen area by developing and implementing the evaluation mechanism as established by Regulation (EU) No 1053/2013 to verify the application of the Schengen *acquis*, including mission expenditure for experts of the Commission and the Member States participating in on-site visits;
- (h) awareness-raising activities on visa policies among stakeholders and the general public, including corporate communication on the political priorities of the Union;
- (i) development of statistical tools, methods and indicators **observing the principle of non-discrimination**;
- (j) operating support for the implementation of the common visa policy.

**(k) supporting Member States in issuing visas, including visas with limited territorial validity as referred to in Article 25 of Regulation (EC) No 810/2009 on humanitarian grounds, for reasons of national interest or because of international obligations**;

3. Within the policy objective referred to in Article 3(1), the instrument shall in particular support the following:

- (a) infrastructures and buildings required for the hosting of large-scale IT systems and associated communication infrastructure components;
- (b) equipment and communication systems necessary to ensure the proper functioning of large-scale IT systems;
- (c) training and communication activities in relation to large-scale IT systems;
- (d) development and upgrading of large-scale IT systems;
- (e) studies, proof of concepts, pilot projects and other relevant actions related to the implementation of large-scale IT systems including their interoperability;

- (f) actions developing innovative methods or deploying new technologies with a potential for transferability to other Member States, especially projects aiming at testing and validating the outcome of Union-funded research projects;
- (g) development of statistical tools, methods and indicators for large-scale IT systems in the field of visa and borders; **observing the principle of non-discrimination;**
- (h) actions to enhance the quality of data stored in ICT systems and improve the exercise of a data subject's right to information, access to, rectification, erasure and restriction of data processing of his or her personal data;**
- (~~h~~i) operating support for the implementation of large-scale IT systems.



## ANNEX IV

### Actions eligible for higher co-financing in line with Article ~~14~~12(3) and Article ~~12~~14(13)(17)

- (1) Purchasing of operating equipment through joint procurement schemes with the European Border and Coast Guard Agency, to be put at the disposal of the European Border and Coast Guard Agency for its operational activities in line with Article ~~39~~64(14) of Regulation (EU) No ~~2016/1624~~2019/1896.
- (2) Measures supporting inter-agency cooperation between a Member State and a neighbouring third country with which the EU shares a common land or maritime border.
- (3) ~~Further development of the European Border and Coast Guard, through~~ **Developing the EBCGA by supporting national authorities responsible for border management to pursue measures related to** common capacity building, joint procurement, establishment of common standards and any other measures streamlining the cooperation and coordination between the Member States and the ~~European Border and Coast Guard Agency~~**EBCGA**, as outlined in paragraph 1(b) of Annex II.
- (4) Joint deployment of immigration liaison officers as referred to in Annex III.
- (5) Measures **within the framework of border control** enhancing the identification of ~~and the immediate support to~~ victims of trafficking in human beings ~~and, as well as developing and supporting adequate referral mechanisms for these target groups and measures in the framework of border control~~ enhancing cross-border cooperation for detecting traffickers ~~in the framework of border control~~.
- (6) **Developing integrated child protection systems at the external borders, including through sufficient training of staff and exchange of good practice among Member States and with the European Border and Coast Guard.**

- (~~6~~7) Measures deploying, transferring, testing and validating new methodology or technology, including pilot projects and follow-up measures to Union-funded ~~security research projects,~~ as referred to in Annex III. **research projects, as referred to in Annex III, and measures to enhance the quality of data stored in ICT systems in the field of visa and borders and to improve the exercise of a data subject's right to information, access to, rectification, erasure and restriction of data processing in the context of actions falling within the scope of this instrument.**
- (8) Measures targeting the identification, immediate assistance and referral to protection services of vulnerable persons.**
- (~~7~~9) Measures for setting up and running hotspot areas in Member States facing existing or potential exceptional and disproportionate migratory pressure.
- (~~8~~10) Further developing forms of cooperation among Member States in visa processing, as outlined in paragraph 2(d) of Annex II.
- (~~9~~11) Increasing the consular presence or representation of Member States in visa-required countries, in particular in countries where no Member State is currently present.
- (12) Measures which aim at improving the interoperability of ICT systems.**

## ANNEX V

### Core performance indicators referred to in Article ~~25~~27(1)

- (a) Specific objective 1: Supporting effective European integrated border management at the external borders implemented by the European Border and Coast Guard as a shared responsibility of the European Border and Coast Guard Agency and of the national authorities responsible for border management, to facilitate legitimate border crossings, to prevent and detect illegal immigration and cross-border crime and to effectively manage migratory flows:

- 1. Number of items of equipment registered in the Technical Equipment Pool of the European Border Cost Guard Agency**
- 2. Number of items of equipment put at the disposal of the European Border Cost Guard Agency**
- 3. Number of initiated / improved forms of cooperation of national authorities with the Eurosur National Coordination Centre (NCC)**
- 4. Number of border crossings through Automated Border Control gates and e-gates**

~~(1) Number of irregular border crossings detected at the EU external borders a) between the border crossing points; and b) at the border crossing points~~

~~Data source: European Border and Coast Guard Agency~~

- ~~(2) 5. Number of persons using fraudulent travel documents detected at~~**addressed recommendations from Schengen Evaluations and from vulnerability assessments in the area of border crossing points management**

~~Data source: European Border and Coast Guard Agency~~

**6. Number of participants who report three months after the training activity that they are using the skills and competences acquired during the training**

**7. Number of persons who have applied for international protection at border crossing points**

**8. Number of persons refused entry by border authorities**

- (b) Specific objective 2: Supporting the common visa policy to **ensure harmonised approach with regard to the issuance of visas and to** facilitate legitimate travel ~~and, while helping~~ prevent migratory and security risks~~;~~.

**1. Number of new/upgraded consulates outside the Schengen area**

**1.1 Of which number of consulates upgraded to enhance client-friendliness for Visa applicants**

**2. Number of addressed recommendations from Schengen Evaluations in the area of the common visa policy**

~~(1) 3.~~ **Number of persons visa applications** using fraudulent travel documents detected at consulates supported by the Fund **digital means**

*Data source: Member States<sup>67</sup>*

**4. Number of initiated / improved forms of cooperation set up among Member States in visa processing**

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<sup>67</sup> — Data for this indicator is collected by Member States through the Visa Information System (VIS) and may be accessed by the Commission in the future for the purposes of reporting and statistics, pending the negotiations on the proposal of the Commission for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 767/2008, Regulation (EC) No 810/2009, Regulation (EU) 2017/2226, Regulation (EU) 2016/399, Regulation XX/2018 [Interoperability Regulation], and Decision 2004/512/EC and repealing Council Decision 2008/633/JHA (COM(2018) 302 final of 16.05.2018).

**5. Number of participants who report three months after the training activity that they are using the skills and competences acquired during the training**

~~(2) Average decision time (and trends) in the visa procedure~~

~~Data source: Member States<sup>68</sup>~~

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<sup>68</sup>— Idem.

## ANNEX VI

### Types of intervention

**TABLE 1: CODES FOR THE INTERVENTION FIELD DIMENSION**

<b>I. European integrated border management</b>	
001	Border checks
002	Border surveillance - air assets
003	Border surveillance - land assets
004	Border surveillance - maritime assets
005	Border surveillance - automated border surveillance systems
006	Border surveillance - other measures
007	Technical and operational measures within the Schengen area which are related to border control
008	Situational awareness and exchange of information
009	Risk analysis
010	Processing of data and information
011	Hotspot areas
<b>012</b>	<b><u>Measures related to the identification and referral of vulnerable persons</u></b>
<b>013</b>	<b><u>Measures related to the identification and referral of persons who are in need of, or wish to apply for, international protection</u></b>
<del>012</del> <b>014</b>	European Border and Coast Guard development
<del>013</del> <b>015</b>	Inter-agency cooperation - national level
<del>014</del> <b>016</b>	Inter-agency cooperation - European Union level
<del>015</del> <b>017</b>	Inter-agency cooperation - with third countries
<del>016</del> <b>018</b>	Deployment of joint immigration liaison officers
<del>017</del> <b>019</b>	Large-scale IT systems - Eurodac for border management purposes

<del>018</del> <b>020</b>	Large-scale IT systems - Entry-exit System (EES)
<del>019</del> <b>021</b>	Large-scale IT systems - European Travel Information and Authorisation System (ETIAS) - <u>others</u>
<b>022</b>	<b><u>Large-scale IT systems - European Travel Information and Authorisation System (ETIAS) - Article 85(2) of Regulation (EU) 2018/1240</u></b>
<b>023</b>	<b><u>Large-scale IT systems - European Travel Information and Authorisation System (ETIAS) - Article 85(3) of Regulation (EU) 2018/1240</u></b>
<del>020</del> <b>024</b>	Large-scale IT systems - Schengen Information System (SIS II)
<del>021</del> <b>025</b>	Large-scale IT systems - Interoperability
<del>022</del> <b>026</b>	Operating support - Integrated border management
<del>023</del> <b>027</b>	Operating support - Large-scale IT systems for border management purposes
<del>024</del> <b>028</b>	Operating support - Special Transit Scheme
<b>029</b>	<b><u>Data quality and data subjects' rights to information, access to, rectification, erasure and restriction of processing of their personal data</u></b>
<b>II. Common visa policy</b>	
001	Improving visa application processing
002	Enhancing the efficiency, client-friendly environment and security at consulates
003	Document security / document advisors
004	Consular cooperation
005	Consular coverage
006	Large-scale IT systems - Visa Information System (VIS)
007	Other <del>IT</del> <b>ICT</b> systems for visa application processing purposes
008	Operating support - Common visa policy
009	Operating support - Large-scale IT systems for visa application processing purposes
010	Operating support - Special Transit Scheme

<b>011</b>	<b><u>Issuance of visas with limited territorial validity</u></b>
<b>012</b>	<b><u>Data quality and data subjects' rights to information, access to, rectification, erasure and restriction of processing of their personal data</u></b>
<b>III.</b>	<b>Technical assistance</b>
001	Information and communication
002	Preparation, implementation, monitoring and control
003	Evaluation and studies, data collection
04	Capacity building

**TABLE 2: CODES FOR THE TYPE OF ACTION DIMENSION**

001	infrastructures and buildings
002	means of transport
003	other operating equipment
004	communication systems
005	IT systems
006	training
007	exchange of best practices - between Member States
008	exchange of best practices - with third countries
009	deployment of experts
010	studies, proofs of concept, pilot projects and similar actions
011	communication activities
012	development of statistical tools, methods and indicators
013	deployment or other follow-up of research projects



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**TABLE 3: CODES FOR THE IMPLEMENTATION MODALITIES DIMENSION**

<b><u>001 Actions as per Art. 12(1)</u></b>
<b><u>002 Specific actions</u></b>
<b><u>003 Actions listed in Annex IV</u></b>
<b><u>004 Operating support</u></b>
<b><u>005 Emergency assistance</u></b>
<del>001 Specific action</del>
<del>002 Emergency assistance</del>
<del>003 Actions listed in Annex IV</del>
<del>004 Implementation of Schengen evaluation recommendations</del>
<del>005 Implementation of vulnerability assessment recommendations</del>
<del>006 Cooperation with third countries</del>
<del>007 Actions in third countries</del>

**TABLE 4: CODES FOR SECONDARY IMPLEMENTATION DIMENSION**

<b><u>001 Cooperation with third countries</u></b>
<b><u>002 Actions in or in relation to third countries</u></b>
<b><u>003 Implementation of Schengen evaluation recommendations</u></b>
<b><u>004 Implementation of vulnerability assessment recommendations</u></b>
<b><u>005 Actions supporting the development and operation of EUROSUR</u></b>

## ANNEX VII

### Eligible actions for operating support

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

- (1) staff costs, **including for training**;
- (2) maintenance or repair of equipment and infrastructure;
- (3) service costs, ~~including at hotspot areas~~ within the scope of this Regulation;
- (4) running costs on operations-;

**(5) costs related to real estate, including rental and depreciation.**

A host Member State in the meaning of Article 2(5) of Regulation (EU) No 1624/2016<sup>69</sup> may use operating support to cover its own running costs for its participation in the operational activities referred to in Article 2(5) of Regulation (EU) No 1624/2016 and falling within the scope of this Regulation or for the purposes of its national border control activities.

- (b) Within the specific objective specific objective set out in Article 3(2)(b), operating support shall cover:
- (1) staff costs, including for training;
  - (2) service costs;
  - (3) maintenance or repair of equipment and infrastructure;
  - (4) costs related to real estate, including rental and depreciation.

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<sup>69</sup> Regulation (EU) 1624/2016 of the European Parliament and of the Council of 14 September 2016 on the European Border and Coast Guard (OJ L 251, 16.9.2016, p.1).

- (c) Within the policy objective set out in Article 3(1), operating support **for large-scale IT systems** shall cover:
- (1) staff costs, including for training;
  - (2) operational management and maintenance of large-scale IT systems and their communication infrastructures, including the interoperability of these systems and rental of secure premises.
- (d) In addition to the above, operating support within the programme for Lithuania shall provide support in line with paragraph 1 of Article ~~16~~**17**.

## ANNEX VIII

### Output and result indicators referred to in Article ~~25~~27(3)

- (a) Specific objective 1: Supporting effective European integrated border management at the external borders implemented by the European Border and Coast Guard as a shared responsibility of the European Border and Coast Guard Agency and of the national authorities responsible for border management, to facilitate legitimate border crossings, to prevent and detect illegal immigration and cross-border crime and to effectively manage migratory flows;

#### **Output indicators**

##### **1. Number of items of equipment purchased for border crossing points**

##### **1.1 of which number of Automated Border Control gates / self-service systems / e-gates purchased**

##### **2. Number of infrastructure maintained / repaired**

##### **3. Number of hotspot areas supported**

##### **4. Number of facilities for border crossing points constructed / upgraded**

##### **5. Number of aerial vehicles purchased**

##### **5.1 of which number of unmanned aerial vehicles purchased**

##### **6. Number of maritime transport means purchased**

##### **7. Number of land transport means purchased**

##### **8. Number of participants supported**

##### **8.1 of which number of participants in training activities**

- 9. Number of joint liaison officers deployed to third countries**
- 10. Number of IT functionalities developed / maintained / upgraded**
- 11. Number of large-scale IT systems developed / maintained / upgraded**
- 11.1 of which number of large-scale IT systems developed**
- 12. Number of cooperation projects with third countries**
- 13. Number of persons who have applied for international protection at border crossing points**

**Result indicators**

- 14. Number of items of equipment registered in the Technical Equipment Pool of the European Border and Coast Guard Agency**
- 15. Number of items of equipment put at the disposal of the European Border and Coast Guard Agency**
- 16. Number of initiated / improved forms of cooperation of national authorities with the Eurosur National Coordination Centre (NCC)**
- 17. Number of border crossings through Automated Border Control gates and e-gates**
- 18. Number of addressed recommendations from Schengen Evaluations and from vulnerability assessments in the area of border management**
- 19. Number of participants who report three months after the training activity that they are using the skills and competences acquired during the training**

## **20. Number of persons refused entry by border authorities**

~~(1) Border control infrastructure, transport means and other equipment items financed with the support of the instrument:~~

~~—— number of newly built or upgraded border crossing points out of the total number of newly built or upgraded border crossing points in the Member State concerned;~~

~~—— number of Automated Border Control gates;~~

~~—— number of air transport means;~~

~~—— number of maritime transport means;~~

~~—— number of land transport means;~~

~~—— number of items of equipment put at the disposal of the European Border and Coast Guard Agency;~~

~~—— number of other items of equipment, out of which the number of items of equipment for setting up, upgrading or maintaining hotspot areas for the purposes of this Regulation;~~

~~—— number of multipurpose items of equipment supported by the instrument.~~

~~(2) Number of specialised posts in third countries supported by the instrument~~

~~—— joint liaison officers, as referred to in Annex III;~~

~~—— other specialised posts related to border management.~~

~~(3) Number of cooperation projects or cooperation streams set up in Member States with the support of the instrument between the national authorities and the European Border and Coast Guard Agency contributing towards the development of the European Border and Coast Guard.~~

- ~~(4) Number of items of equipment used during the operational activities of the European Border and Coast Guard Agency purchased with support of the instrument out of the total number of items of equipment registered in the Technical Equipment Pool of the European Border and Coast Guard Agency.~~
- ~~(5) Number of cooperation projects or cooperation streams of national agencies with the Eurosur National Coordination Centre (NCC) established with support of the instrument.~~
- ~~(6) Number of staff trained in aspects related to the integrated border management with the support of the instrument.~~
- ~~(7) Number of IT functionalities developed, implemented, maintained or upgraded with the support of the instrument, including for interoperability purposes:~~
- ~~—— SISH;~~
  - ~~—— ETIAS;~~
  - ~~—— EES;~~
  - ~~—— VIS for border management purposes;~~
  - ~~—— Eurodac for border management purposes;~~
  - ~~—— Number of connections of IT systems to the European Search Portal financed with the support of the instrument;~~
  - ~~—— Any other large-scale IT systems within the scope of this Regulation.~~
- ~~(8) Number of Schengen Evaluation recommendations in the area of borders and vulnerability assessment recommendations addressed with the support of the instrument, out of the total number of recommendations having financial implication.~~

- (b) Specific objective 2: Supporting the common visa policy to **ensure harmonised approach with regard to the issuance of visas and to** facilitate legitimate travel ~~and~~, **while helping** prevent migratory and security risks.

**Output indicators**

**1. Number of projects supporting the digitalisation of visa processing**

**2. Number of participants supported**

**2.1 of which number of participants in training activities**

**3. Number of staff deployed to consulates in third countries**

**3.1 of which number of staff deployed for visa processing**

**4. Number of IT functionalities developed / maintained / upgraded**

**5. Number of large-scale IT systems developed / maintained / upgraded**

**5.1 of which number of large-scale IT systems developed**

**6. Number of infrastructure maintained / repaired**

**7. Number of real estates rented / depreciated**

**Result indicators**

**8. Number of new / upgraded consulates outside the Schengen area**

**8.1 of which number of consulates upgraded to enhance client-friendliness for Visa applicants**

**9. Number of addressed recommendations from Schengen Evaluations in the area of the common visa policy**



**10. Number of visa applications using digital means**

**11. Number of initiated / improved forms of cooperation set up among Member States in visa processing**

**12. Number of participants who report three months after the training activity that they are using the skills and competences acquired during the training**

~~(1) Number of consulates outside the Schengen area set up or upgraded with the support of the instrument out of the total number of consulates set up or upgraded of the Member State outside the Schengen area.~~

~~(2) Number of staff trained and number of training courses in aspects related to the common visa policy with the support of the instrument.~~

~~(3) Number of IT functionalities developed, implemented, maintained or upgraded with the support of the instrument, including for interoperability purposes:~~

~~——VIS;~~

~~——EES;~~

~~——Any other large-scale IT systems within the scope of this Regulation.~~

~~(4) Number of forms of cooperation among Member States in visa processing set up and upgraded with the support of the instrument:~~

~~——co-locations;~~

~~——common application centres;~~

~~——representations;~~

~~——others.~~

- ~~(5) Number of Schengen Evaluation recommendations in the area of the common visa policy implemented with the support of the instrument, as a share of the total number of recommendations having financial implications.~~
- ~~(6) Number of visa required countries where the number of Member States present or represented has increased with the~~
-