



Council of the
European Union

Brussels, 19 May 2021
(OR. en)

7234/21

**Interinstitutional File:
2018/0258 (COD)**

UD 111
ENFOCUSTOM 43
MI 216
COMER 31
TRANS 184
ECOFIN 295
CADREFIN 156
CODEC 466

LEGISLATIVE ACTS AND OTHER INSTRUMENTS

Subject: Position of the Council at first reading with a view to the adoption of a
REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE
COUNCIL establishing, as part of the Integrated Border Management
Fund, the instrument for financial support for customs control equipment

REGULATION (EU) 2021/...
OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of ...

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

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the European Commission,

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

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

Acting in accordance with the ordinary legislative procedure²,

¹ OJ C 62, 15.2.2019, p. 67.

² Position of the European Parliament of 16 April 2019 (not yet published in the Official Journal) and position of the Council at first reading of ... (not yet published in the Official Journal). Position of the European Parliament of ... (not yet published in the Official Journal).

Whereas:

- (1) The 2 140 customs offices situated at the external borders of the Union need to be properly equipped to ensure the efficient and effective operation of the customs union. The need for adequate customs controls with equivalent results is ever more pressing, not only because of the traditional function of customs, which is to collect revenue, but also increasingly because of the need to significantly reinforce the control of goods entering and exiting Union's external borders in order to ensure both safety and security. However, at the same time, such controls on the movement of goods across the external borders should not impair but rather facilitate legitimate trade with third countries.
- (2) The customs union is one of the cornerstones of the Union, which is one of the largest trading blocks in the world. Since the customs union is essential for the proper functioning of the internal market, and for businesses and citizens to benefit from it, continuous steps to strengthen the customs union are needed.

- (3) There is currently an imbalance in the performance of customs control by Member States. This imbalance is due to differences between Member States both in terms of their geographic features, and their capacities and resources. The ability of Member States to react to challenges generated by the constantly evolving global business models and supply chains depends not only on the human component but also on the availability, and on the proper functioning, of modern and reliable customs control equipment. Challenges, such as the surge in e-commerce, increasing digitalisation and the need to improve resilience to cyber-attacks, will also increase demand for effective customs controls. The provision of equivalent customs control equipment is therefore an important element in addressing that current imbalance. It will improve equivalence in the performance of customs controls across the Member States and thereby contribute to preventing the diversion of flows of goods towards the weakest points in the customs control system, often referred to as 'import point shopping'. Consequently, goods entering the customs territory of the Union should be subject to risk-based controls in accordance with Regulation (EU) No 952/2013 of the European Parliament and of the Council¹ ('the Union Customs Code').
- (4) Member States have repeatedly expressed the need for financial support, and have requested an in-depth analysis of the equipment needed. In its conclusions on customs funding on 23 March 2017, the Council invited the Commission to evaluate the possibility of funding technical equipment needs from future Commission financial programmes and improve coordination and cooperation between customs authorities and other law enforcement authorities for funding purposes.

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

- (5) Under the Union Customs Code, customs controls are to be understood not only as the enforcement of customs legislation but also as the enforcement of other legislation governing the entry, exit, transit, movement, storage and end-use of goods moved between the customs territory of the Union and countries or territories outside the customs territory of the Union, and the presence and movement within the customs territory of the Union of non-Union goods and goods placed under the end-use procedure. That other legislation empowers customs authorities to carry out specific control tasks and contains provisions on taxation, in particular as regards excise duties and value added tax, on the external aspects of the internal market, on the common trade policy and other common Union policies having a bearing on trade, on the overall supply chain security and on the protection of the financial and economic interests of the Union and its Member States.

- (6) Supporting the achievement of an adequate and equivalent level of customs control results at the Union's external borders enables the benefits of the customs union to be maximised, thereby giving additional support to customs authorities acting as one to protect the interests of the Union. A dedicated Union fund for customs control equipment to correct current imbalances would contribute to the overall cohesion between Member States. That dedicated fund would take account of the different needs experienced at the different types of border, namely those at sea and on other waterways, in the air, and on land, including rail and road borders, as well as postal hubs. In view of the challenges facing the world, in particular the continued need to protect the financial and economic interests of the Union and its Member States while easing the flow of legitimate trade, the availability of modern and reliable control equipment at the external borders is indispensable.

- (7) It is therefore appropriate to establish a new Instrument for financial support for customs control equipment intended to be used at all types of borders. The Instrument should support the customs union and the work of the customs authorities, in particular helping them to protect the Union's financial and economic interests, to ensure security and safety within the Union and to protect the Union from unfair and illegal trade, such as counterfeiting of goods, while facilitating legitimate business activity. It should contribute to adequate and equivalent results of customs controls. Furthermore, customs control equipment financed under this Instrument should support the implementation of the customs risk management framework as referred to in the Union Customs Code. This objective should be achieved through the transparent purchase, maintenance and upgrading of relevant, state-of-the-art and reliable customs control equipment, taking due account of the protection of data, cyber-resilience, and safety and environmental considerations, including the environmentally friendly disposal of the replaced equipment.

- (8) Customs authorities of the Member States have been taking on an increasing number of responsibilities which are carried out at the external border and which often extend into the security field. It is therefore important to provide Union financial support to the Member States in order to enable them to ensure equivalence in the performance of border control and customs control at the external borders of the Union. It is equally important to promote, at Union borders, as regards controls of goods and controls of persons, inter-agency cooperation among the national authorities in each Member State that are responsible for border control or for other tasks carried out at the border, with a view to maximising Union added value in the field of border management and customs controls.
- (9) It is therefore necessary to establish an Integrated Border Management Fund ('the Fund').
- (10) Due to the legal particularities of Title V of the Treaty on the Functioning of the European Union (TFEU), as well as the different applicable legal bases regarding the policies on external borders and on customs control, it is not legally possible to establish the Fund as a single instrument.

- (11) The Fund should therefore be established as a comprehensive framework for Union financial support in the field of border management, consisting of the Instrument for financial support for customs control equipment ('the Instrument') established by this Regulation and the Instrument for Financial Support for Border Management and Visa Policy established by Regulation (EU) .../... of the European Parliament and of the Council¹⁺.
- (12) In view of the importance of tackling climate change and in line with the Union's commitments to implement the Paris Agreement under the United Nations Framework Convention on Climate Change², and to achieve the United Nations Sustainable Development Goals of the 2030 Agenda for Sustainable Development adopted on 25 September 2015, the actions under this Regulation should contribute to the achievement of the Union's goal of spending at least 30 % of the total amount of the Union budget on supporting climate objectives and of the Union's ambition to spend 7,5 % of the annual Union budget on biodiversity in 2024 and 10 % both in 2026 and in 2027, while taking into account the existing overlaps between climate and biodiversity goals.

¹ Regulation (EU) .../... of the European Parliament and of the Council of... establishing, as part of the Integrated Border Management Fund, the Instrument for Financial Support for Border Management and Visa Policy (OJ ...).

⁺ OJ: Please insert in the text the number of the Regulation contained in document ST 6487/21 [2018/0249(COD)] and insert the number, date, title and OJ reference of that Regulation in the footnote.

² OJ L 282, 19.10.2016, p. 4.

- (13) This Regulation lays down a financial envelope for the entire duration of the Instrument, which is to constitute the prime reference amount, within the meaning of point 18 of the Interinstitutional Agreement of 16 December 2020 between the European Parliament, the Council of the European Union and the European Commission on budgetary discipline, on cooperation in budgetary matters and on sound financial management, as well as on new own resources, including a roadmap towards the introduction of new own resources¹, for the European Parliament and the Council during the annual budgetary procedure. It should be possible for that financial envelope to cover necessary and duly justified expenses for activities for managing the Instrument and evaluating its performance, insofar as those activities are related to the general and specific objectives of the Instrument.
- (14) Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council² (the 'Financial Regulation') applies to this Instrument. The Financial Regulation lays down rules on the implementation of the Union budget, including the rules on grants, prizes, procurement, indirect management, financial instruments, budgetary guarantees, financial assistance and the reimbursement of external experts.

¹ OJ C 433I, 22.12.2020, p. 28.

² 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).

- (15) Horizontal financial rules adopted by the European Parliament and the Council on the basis of Article 322 TFEU apply to this Regulation. These rules are laid down in the Financial Regulation and determine in particular the procedure for establishing and implementing the budget through grants, procurement, prizes and indirect implementation, and provide for checks on the responsibility of financial actors. Rules adopted on the basis of Article 322 TFEU also include a general regime of conditionality for the protection of the Union budget. Funding under this Instrument should be subject to the principles referred to in the Financial Regulation and should ensure the optimal use of financial resources in achieving its objectives.
- (16) Regulation (EU) 2021/444 of the European Parliament and of the Council¹ establishes the Customs programme for cooperation in the field of customs (the 'Customs programme') to support the customs union and customs authorities. In order to preserve the coherence and horizontal coordination of cooperation actions relating to customs and customs control equipment, it is appropriate to implement such actions under a single legal act, namely, the Customs programme, containing a single set of rules. Therefore, only the purchase, maintenance and upgrade of the eligible customs control equipment should be supported under this Instrument, while all other related actions, such as cooperation actions for the assessment of needs or training relating to the equipment concerned, should be supported by the Customs programme.

¹ Regulation (EU) 2021/444 of the European Parliament and of the Council of 11 March 2021 establishing the Customs programme for cooperation in the field of customs and repealing Regulation (EU) No 1294/2013 (OJ L 87, 15.3.2021, p. 1).

- (17) In addition, and where appropriate, the Instrument should also support the purchase or upgrade of customs control equipment for testing new pieces of equipment or new functionalities for existing pieces of equipment in operational conditions before Member States start large-scale purchases of such new equipment. Testing in operational conditions should follow up in particular on the outcomes of research of customs control equipment in the framework of Regulation (EU) .../... of the European Parliament and of the Council¹⁺. The Commission should encourage the joint procurement and joint testing of customs control equipment by two or more Member States, making use of the cooperation tools under the Customs programme.

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

⁺ OJ: Please insert in the text the number of the Regulation contained in document ST 7064/20 [2018/0224(COD)] and insert the number, date, title and OJ reference of that Regulation in the footnote.

(18) Most customs control equipment may be equally or incidentally fit for controls of compliance with other Union law, such as that on border management, visa or police cooperation. The Fund has therefore been conceived as two complementary instruments for the purchase of equipment, each with a distinct but complementary scope. On the one hand, the Instrument for Financial Support for Border Management and Visa Policy will only financially support the costs of equipment of which the primary aim or effect is integrated border management, but will also allow that equipment to be used for additional purposes, such as customs controls. On the other hand, the instrument for financial support for customs control equipment established by this Regulation will only financially support the costs of equipment of which the primary aim or effect is customs controls but will also allow that equipment to be used for additional purposes, such as border controls and security. This distribution of roles between the two instruments will foster inter-agency cooperation, as referred to in point (e) of Article 3(1) of Regulation (EU) 2019/1896 of the European Parliament and of the Council¹, as a component of the European integrated border management approach, 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. The sharing of equipment between customs and other border authorities should not be systematic.

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

- (19) In accordance with Article 193(2) of the Financial Regulation, a grant may be awarded for an action which has already begun, provided that the applicant can demonstrate the need for starting the action prior to signature of the grant agreement. While in such cases the costs incurred prior to the date of submission of the grant application would in principle not be eligible, this should exceptionally be possible in view of the delayed entry into force of this Regulation as compared to the beginning of the multiannual financial framework 2021-2027. In order to allow implementation from the beginning of the multiannual financial framework 2021-2027 and to avoid any delay in Union support which could be prejudicial to the Union's interest in being properly equipped to ensure the efficient and effective operation of the customs union, it should be possible, for a limited period of time at the beginning of the multiannual financial framework 2021-2027, to provide in the financing decision for costs incurred in respect of actions supported under this Regulation which have already begun to be considered eligible as of 1 January 2021, even if those actions were implemented and those costs were incurred before the grant application was submitted.

- (20) By way of derogation from the Financial Regulation, funding of an action by several Union programmes or instruments should be possible in order to allow and support, where appropriate, cooperation and interoperability across domains. However, in accordance with the principle of prohibition of double funding established by the Financial Regulation, in such cases, the contributions are not permitted to cover the same costs. If a Member State has already been awarded or has received contributions from another Union programme or support from a Union fund for the acquisition of the same equipment, that contribution or support should be communicated to the Commission, in accordance with Article 191 of the Financial Regulation.
- (21) Any funding in excess of the co-financing rate ceiling should be granted only in duly justified cases, which might include cases of joint procurement and of joint testing of customs control equipment by two or more Member States.
- (22) In view of the rapid evolution of technologies, threats and customs priorities work programmes should not extend over longer periods. At the same time, annual work programmes would not be necessary for the implementation of the Instrument and would increase the administrative burden on the Commission and Member States. Against that backdrop, work programmes should in principle cover more than one budgetary year, but not more than three.

- (23) In order to ensure uniform conditions for the implementation of the work programmes under this Regulation, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council¹.
- (24) Although central implementation is indispensable if the specific objective of ensuring equivalent results of customs controls is to be achieved, the technical nature of this Instrument means that preparatory work is required at technical level. Therefore, implementation should be supported by assessments of needs. Those assessments of needs are dependent on national expertise and experience through the involvement of customs authorities. They should be based on a clear methodology that includes a minimum number of steps ensuring the collection of the relevant information. The Commission should use this information to determine the allocation of the funds to Member States, taking into consideration in particular the volume of trade, the relevant risks and the administrative capacity of the customs authorities to use and maintain the equipment, with a view to achieving the most efficient use of the customs control equipment financed under the Instrument. To contribute to budgetary discipline, the conditions for the prioritisation of grants should be clearly defined and based on such an assessment of needs.

¹ Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).

- (25) To ensure regular monitoring and reporting, a proper framework for monitoring the results achieved by the Instrument and actions under it should be put in place. Such monitoring and reporting should be based on quantitative and qualitative indicators for measuring the effects of the actions under the Instrument. Reporting requirements should include a requirement to provide the Commission with information on customs control equipment where the cost of a piece of customs control equipment exceeds EUR 10 000 exclusive of taxes. That information should be distinguished from the information required to be provided to the general public and to the media in order to promote the actions and the results of the Instrument.

(26) Pursuant to paragraphs 22 and 23 of the Interinstitutional Agreement of 13 April 2016 on Better Law-Making¹, the Instrument should be evaluated on the basis of information collected in accordance with specific monitoring requirements, while avoiding an administrative burden, in particular on Member States, and overregulation. Those requirements, where appropriate, should include measurable indicators as a basis for evaluating, in a comparable and complete manner, the effects of the Instrument on the ground. The interim and final evaluations, which should be performed no later than four years after the start of the implementation and the completion of the Instrument, respectively, should contribute to the efficient decision-making process concerning financial support for customs control equipment under the next multiannual financial frameworks. It is therefore of the utmost importance that the interim and final evaluations include satisfactory and sufficient information and that those evaluations are delivered in due time. The Commission should include in the interim and final evaluations details of the sharing between customs and other border authorities of equipment financed under the Instrument to the extent that relevant information has been provided by the Member States. In addition to the interim and final evaluations of the Instrument, annual progress reports should, as part of the performance reporting system, be issued, to monitor the implementation of the Instrument. Those reports should include a summary of the lessons learnt and, where appropriate, of the obstacles encountered, and shortfalls discovered in the context of the activities of the Instrument that took place in the year in question. Those annual progress reports should be communicated to the European Parliament and the Council.

¹ OJ L 123, 12.5.2016, p. 1.

(27) In order to respond appropriately to evolving policy priorities, threats and technologies, the power to adopt acts in accordance with Article 290 TFEU should be delegated to the Commission in respect of amending the indicative list of customs control equipment that may be used to achieve the customs control purposes and the list of indicators to measure the achievement of the specific objective. It is of particular importance that the Commission carry out appropriate and fully transparent consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.

(28) In accordance with the Financial Regulation, Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council¹ and Council Regulations (EC, Euratom) No 2988/95², (Euratom, EC) No 2185/96³ and (EU) 2017/1939⁴, the financial interests of the Union are to be protected by means of proportionate measures, including measures relating to the prevention, detection, correction and investigation of irregularities, including fraud, to the recovery of funds lost, wrongly paid or incorrectly used, and, where appropriate, to the imposition of administrative penalties. In particular, in accordance with Regulations (Euratom, EC) No 2185/96 and (EU, Euratom) No 883/2013, the European Anti-Fraud Office (OLAF) has the power to carry out administrative investigations, including on-the-spot checks and inspections, with a view to establishing whether there has been fraud, corruption or any other illegal activity affecting the financial interests of the Union.

¹ 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).

² Council Regulation (EC, Euratom) No 2988/95 of 18 December 1995 on the protection of the European Communities financial interests (OJ L 312, 23.12.1995, p. 1).

³ 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).

⁴ 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).

The European Public Prosecutor's Office (EPPO) is empowered, in accordance with Regulation (EU) 2017/1939, to investigate and prosecute criminal offences affecting the financial interests of the Union, as provided for in Directive (EU) 2017/1371 of the European Parliament and of the Council¹. In accordance with the Financial Regulation, any person or entity receiving Union funds is to fully cooperate in the protection of the financial interests of the Union, grant the necessary rights and access to the Commission, OLAF, the Court of Auditors and, in respect of those Member States participating in enhanced cooperation pursuant to Regulation (EU) 2017/1939, the EPPO, and ensure that any third parties involved in the implementation of Union funds grant equivalent rights.

- (29) The forms of funding and the methods of implementation under this Regulation should be chosen on the basis of their ability to achieve the specific objective of the actions and to deliver results, taking into account, in particular, the costs of controls, the administrative burden, and the expected risk of non-compliance. Those forms and methods 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.

¹ 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).

- (30) Since the objective of this Regulation, which is to establish an Instrument that supports the customs union and customs authorities, by providing financial support for the purchase, maintenance and upgrading of customs control equipment, cannot be sufficiently achieved by the Member States alone further to objective imbalances existing at geographical level amongst them, but can rather, by reason of the equivalent level and quality of results of customs controls that a coordinated approach and a centralised funding will help providing, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective.
- (31) The recipients of Union funding should acknowledge the origin of those funds and ensure the visibility of the Union funding, in particular when promoting the actions and their results, by providing coherent, effective and proportionate targeted information to multiple audiences, including the media and the public. Such information should show the added value of the Instrument in supporting the customs union, and in particular, how it helps customs authorities to fulfil their missions, as well as the efforts of the Commission to ensure budgetary transparency. Furthermore, in order to ensure transparency the Commission should regularly provide information to the public relating to the Instrument, its actions and results, referring to, inter alia, the work programmes adopted under this Regulation.

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

HAVE ADOPTED THIS REGULATION:

Chapter I

General provisions

Article 1

Subject matter

Jointly with Regulation (EU) .../...⁺, this Regulation establishes an Integrated Border Management Fund (the 'Fund') for the period from 1 January 2021 to 31 December 2027.

As part of that Fund, this Regulation establishes an Instrument to provide financial support for the purchase, maintenance and upgrading of customs control equipment (the 'Instrument') for the period from 1 January 2021 to 31 December 2027. The duration of the Instrument shall be aligned to the duration of the multiannual financial framework.

This Regulation lays down the objectives of the Instrument, the budget for the period 2021 2027, the forms of Union funding and the rules for providing such funding.

⁺ OJ: Please insert in the text the number of the Regulation contained in document ST 6487/21 [2018/0249(COD)].

Article 2
Definitions

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

- (1) 'customs authorities' means the customs authorities as defined in point (1) of Article 5 of Regulation (EU) No 952/2013;
- (2) 'customs controls' means the customs controls as defined in point (3) of Article 5 of Regulation (EU) No 952/2013;
- (3) 'customs control equipment' means equipment intended primarily for performing customs controls;
- (4) 'mobile customs control equipment' means any means of transport that, beyond its mobile capacities, is itself intended to be a piece of customs control equipment or that is fully equipped with customs control equipment;
- (5) 'maintenance' means preventive, corrective and predictive interventions, including operational and functional checks, servicing, repair and overhaul of a piece of customs control equipment necessary in order for it to retain, or to be restored to, its specified operable condition with a view to it achieving its maximum useful life, but excluding any upgrading;

- (6) 'upgrade' means evolutive interventions necessary for bringing an existing piece of customs control equipment from an outdated to a state-of-the-art specified operable condition.

Article 3

Instrument objectives

1. As part of the Fund and with a view to achieving the long-term aim of the harmonised application of customs controls by the Member States, the general objective of the Instrument is to support the customs union and customs authorities in their mission to protect the financial and economic interests of the Union and its Member States, to ensure security and safety within the Union and to protect the Union from illegal trade while facilitating legitimate business activity.
2. The specific objective of the Instrument is to contribute to adequate and equivalent results of customs controls through the transparent purchase, maintenance and upgrading of relevant and reliable state-of-the-art customs control equipment that is secure, safe and environmental-friendly, thereby helping the customs authorities act as one to protect the interests of the Union.

Article 4

Budget

1. The financial envelope for the implementation of the Instrument for the period 2021 – 2027 shall be EUR 1 006 407 000 in current prices.
2. The amount referred to in paragraph 1 may also cover expenses for preparation, monitoring, control, audit, evaluation and other activities for managing the Instrument and evaluating the achievement of its objectives. It may also cover expenses linked to studies, meetings of experts, information and communication actions that are related to the objectives of the Instrument, as well as expenses linked to information technology networks focusing on information processing and exchange, including corporate information technology tools and other technical and administrative assistance needed in connection with the management of the Instrument.

Article 5

Implementation and forms of Union funding

1. The Instrument shall be implemented under direct management in accordance with the Financial Regulation.
2. The Instrument may provide funding in any of the forms laid down in the Financial Regulation and in particular by means of grants.
3. When the action that is supported under the Instrument involves the purchase or upgrade of customs control equipment, the Commission shall set up a coordination mechanism to ensure the interoperability of the customs control equipment purchased with the support of Union programmes and instruments, and therefore its efficient use.

Chapter II

Eligibility

Article 6

Eligible actions

1. In order for actions to be eligible for funding under the Instrument, those actions must comply with the following requirements:
 - (a) implement the objectives set out in Article 3; and
 - (b) support the purchase, maintenance or upgrading of customs control equipment including innovative detection technology equipment, that has one or more of the following customs control purposes:
 - (1) non-intrusive inspection;
 - (2) indication of hidden objects on humans;
 - (3) radiation detection and nuclide identification;
 - (4) analysis of samples in laboratories;

- (5) sampling and field analysis of samples;
- (6) handheld search.

Annex I contains an indicative list of customs control equipment that may be used to achieve the customs control purposes referred to in points (1) to (6) of the first subparagraph.

2. In duly justified cases, actions under the first subparagraph of paragraph 1 may also cover the transparent purchase, maintenance and upgrading of customs control equipment for testing new pieces of equipment or new functionalities for existing pieces of equipment in operational conditions.
3. In accordance with point (a) of the second subparagraph of Article 193(2) of the Financial Regulation, taking into account the delayed entry into force of this Regulation and in order to avoid any delay in Union support which could be prejudicial to the Union's interest in being properly equipped to ensure the efficient and effective operation of the customs union, costs incurred in respect of actions supported under this Regulation may, for a limited period, exceptionally be considered eligible from 1 January 2021, even if those actions were implemented and those costs incurred before the grant application was submitted.

4. The Commission is empowered to adopt delegated acts in accordance with Article 14 to amend this Regulation by updating, where necessary, the indicative list of customs control equipment set out in Annex I.
5. Customs control equipment financed under this Instrument should be used primarily for customs controls, but may also be used for additional purposes, including, in support of the national border management authorities and investigation, for the control of persons. Such customs control equipment shall not be systematically shared between customs and other border authorities.
6. The Commission shall encourage the joint procurement and joint testing of customs control equipment by two or more Member States.

Article 7

Eligible entities

By way of derogation from Article 197 of the Financial Regulation, the eligible entities shall be the customs authorities on condition that they provide the information necessary for the assessment of needs referred to in Article 11(4) of this Regulation.

Article 8
Co-financing rate

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

Article 9
Eligible costs

The costs directly related to actions referred to in Article 6 shall be eligible for funding under the Instrument.

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

- (a) costs related to the purchase of land;
- (b) costs relating to training or the upgrading of skills, other than the introductory training included in the purchase or upgrade contract;
- (c) costs relating to infrastructure, such as buildings or outdoor facilities, as well as to furniture;

- (d) costs associated with electronic systems, with the exception of software and software updates directly necessary to use the customs control equipment and with the exception of the electronic software and programming necessary to interlink existing software with the customs control equipment;
- (e) costs of networks, such as secured or unsecured communication channels, or subscriptions, with the exception of networks or subscriptions exclusively necessary to use the customs control equipment;
- (f) costs of transport means, such as vehicles, aircrafts or ships, with the exception of mobile customs control equipment;
- (g) costs of consumables, including reference or calibration material, for customs control equipment;
- (h) costs relating to personal protective equipment.

Chapter III

Grants

Article 10

Award, complementarity and combined funding

1. Grants under the Instrument shall be awarded and managed in accordance with Title VIII of the Financial Regulation.
2. In accordance with point (f) of the first paragraph of Article 195 of the Financial Regulation, grants shall be awarded without a call for proposals to the entities that are eligible under Article 7 of this Regulation.
3. An action that has received a contribution under the Instrument may also receive a contribution from the Customs programme or from another Union programme, provided that the contributions do not cover the same costs. The rules of the relevant Union programme shall apply to the corresponding contribution to the action. The cumulative financing shall not exceed the total eligible costs of the action. The support from the different Union programmes may be calculated on a pro-rata basis in accordance with the documents setting out the conditions for support.

4. The work of the evaluation committee referred to in Article 150 of the Financial Regulation shall be based on the general principles applicable to grants laid down in Article 188 of that Regulation and, in particular, on the principles of equal treatment and transparency laid down in points (a) and (b) of that Article, as well as on the principle of non-discrimination.
5. The evaluation committee shall evaluate proposals on the basis of the award criteria, taking into account, where appropriate, the relevance of the proposed action in view of the objectives pursued, the quality of the proposed action, its impact, including its economic, social and environmental impact, and its budget and cost-effectiveness.

Chapter IV

Programming, monitoring and evaluation

Article 11

Work programme

1. The Instrument shall be implemented through work programmes as referred to in Article 110(2) of the Financial Regulation.

2. The Commission shall adopt implementing acts establishing those work programmes. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 15(2).
3. The work programmes shall aim to achieve the objectives set out in Article 3 through actions in accordance with Article 6. The work programmes shall set out the total amount of the financing plan for all actions. In addition, they shall set out:
 - (a) for each action:
 - (i) the objectives pursued and the expected results, in accordance with the general and specific objectives set out in Article 3;
 - (ii) a description of the actions to be financed;
 - (iii) where appropriate, an indication of the amount allocated to each action; and
 - (iv) the method of implementation and an indicative implementation timetable;
 - (b) for grants, the maximum rate of co-financing referred to in Article 8.

4. The preparation of the work programmes referred to in paragraph 1 shall be supported by an assessment of the needs of the customs authorities. That assessment of needs shall be based on the following:
- (a) a common categorisation of border crossing points;
 - (b) a comprehensive description of available customs control equipment;
 - (c) a common list of customs control equipment that should be available, by reference to the category of border crossing points; and
 - (d) an estimate of financial needs.

The assessment of needs shall be based on actions carried out under the Customs 2020 programme established by Regulation (EU) No 1294/2013 of the European Parliament and of the Council¹ or under the Customs programme and shall be updated regularly at least every three years.

Article 12

Monitoring and reporting

1. Indicators to report on the progress of the Instrument towards the achievement of the general and specific objectives set out in Article 3 are listed in Annex II.

¹ Regulation (EU) No 1294/2013 of the European Parliament and of the Council of 11 December 2013 establishing an action programme for customs in the European Union for the period 2014-2020 (Customs 2020) and repealing Decision No 624/2007/EC (OJ L 347, 20.12.2013, p. 209).

2. To ensure effective assessment of the Instrument's progress towards the achievement of its objectives, the Commission is empowered to adopt delegated acts in accordance with Article 14 to amend Annex II with regard to the indicators where considered necessary, as well as to supplement this Regulation with provisions on the establishment of a monitoring and evaluation framework.
3. The performance reporting system shall ensure that data for monitoring the implementation and results of the Instrument are collected efficiently, effectively and in a timely manner. To that end, proportionate reporting requirements shall be imposed on the recipients of Union funds.
4. Where the cost of a piece of customs control equipment exceeds EUR 10 000 exclusive of taxes, the reporting requirements referred to in paragraph 3 shall include at least the annual communication to the Commission of the following information:
 - (a) a detailed list of the customs control equipment financed under the Instrument;
 - (b) information on the use of the customs control equipment, including any related results, and supported, where appropriate, by relevant statistics.

Article 13
Evaluation

1. Evaluations shall be carried out in a timely manner so that they can be used in the decision-making process.
2. An interim evaluation of the Instrument shall be carried out by the Commission once there is sufficient information available about its implementation, but no later than four years after the start of that implementation. In its interim evaluation, the Commission shall assess the performance of the Instrument, including aspects such as its effectiveness, efficiency, coherence and relevance, as well as the synergies within the Instrument and Union added value.
3. At the end of the implementation of the Instrument, but no later than four years after the end of the period specified in Article 1, a final evaluation of the Instrument shall be carried out by the Commission.
4. The Commission shall communicate the conclusions of the evaluations, accompanied by its observations and lessons learnt, to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions.

Chapter V

Exercise of the delegation and committee procedure

Article 14

Exercise of the delegation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.
2. The power to adopt delegated acts referred to in Articles 6(4) and 12(2) shall be conferred on the Commission until 31 December 2027. The Commission shall draw up a report in respect of the delegation of power not later than nine months before that date. The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period.
3. The delegation of power referred to in Articles 6(4) and 12(2) may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

4. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making.
5. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.
6. A delegated act adopted pursuant to Articles 6(4) and 12(2) shall enter into force only if no objection has been expressed either by the European Parliament or by the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.

Article 15

Committee procedure

1. The Commission shall be assisted by the Customs Programme Committee established by Article 17 of Regulation (EU) 2021/444.
2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

Chapter VI

Transitional and final provisions

Article 16

Information, communication and publicity

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

Article 17
Transitional provision

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

Article 18
Entry into force

This Regulation shall enter into force on the 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 all Member States.

Done at ...,

For the European Parliament
The President

For the Council
The President

ANNEX I

INDICATIVE LIST OF CUSTOMS CONTROL EQUIPMENT THAT MAY BE USED
TO ACHIEVE THE CUSTOMS CONTROL PURPOSES LISTED IN POINT (B)
OF THE FIRST SUBPARAGRAPH OF ARTICLE 6(1)

CUSTOMS CONTROL PURPOSE	CUSTOMS CONTROL EQUIPMENT	
	CATEGORY	APPLICATION
1. Non-intrusive inspection	X-ray scanner - High energy	Containers, trucks, rail wagons and vehicles
	X-ray scanner - Low energy	Pallets, boxes and parcels
		Passenger baggage
		Vehicles
	X-ray backscatter	Containers
		Trucks
		Vehicles
	Other	Automatic Number Plate / Container Recognition Systems
		Vehicle weighting scales
		Forklifts and similar mobile customs control equipment

CUSTOMS CONTROL PURPOSE	CUSTOMS CONTROL EQUIPMENT	
	CATEGORY	APPLICATION
2. Indication of hidden objects on humans ¹	X-ray based backscatter portal	Mainly used in airports to detect hidden objects on humans (drugs, explosives, cash)
	Body scanner	
	Millimetre wave-based security scanner	
3. Radiation detection and nuclide identification	Radiological and Nuclear Detectors	Personal Radiation Monitor/detector (PRM)
		Handheld Radiation detector
		Isotope Identification Device (RIID)
		Radiation Portal Monitor (RPM)
		Spectrometric Portal Monitor for isotope identification (SPM)
4. Analysis of samples in laboratories	Equipment for the identification, quantification and verification of all possible goods	Gas and liquid chromatography (GC, LC, HPLC etc.)
		Spectrometry and techniques combined with spectrometry (IR, Raman, UV-VIS, Fluorescence, GC-MS etc.)
		X-ray equipment (XRF etc.)
		NMR spectrometry and Stable isotope analyses
		Other laboratory equipment (AAS, Distillation Analyser, DSC, Electrophoresis, Microscope, LSC, Smoking machine etc.)

¹ Subject to applicable legislative provisions and other recommendations as regards the protection of health and the respect of privacy.

CUSTOMS CONTROL PURPOSE	CUSTOMS CONTROL EQUIPMENT	
	CATEGORY	APPLICATION
5. Sampling and field analysis of samples	Trace detection based on Ion Mobility Spectrometry (IMS)	Portable equipment to screen traces of specific threat materials
	Canine trace detection	Applied to a range of risks on small and larger objects
	Sampling	Tools to take samples, fume hood, glovebox
	Mobile laboratories	Vehicle fully housing equipment for field analysis of samples
	Handheld detectors	Analysis of organic materials, metals and alloys
		Chemical colorimetric tests
		Raman spectroscopy
		Infrared spectroscopy
		X-ray fluorescence
		Gas detectors for containers
	6. Handheld search	Personal hand tools
Mechanics tool kit		
Telescoping mirror		
Devices		Endoscope
		Stationary or handed metal detector
		Cameras to check the under-side of vehicles
		Ultrasonic device
		Density meter
Other		Underwater search

ANNEX II

INDICATORS FOR REPORTING ON THE PROGRESS OF THE INSTRUMENT IN ACHIEVING THE GENERAL AND SPECIFIC OBJECTIVES SET OUT IN ARTICLE 3

To report on the progress of the Instrument towards the achievement of the general and specific objectives set out in Article 3, the following indicators shall be used:

Equipment

- (a) Availability at land border crossing points of customs control equipment meeting agreed standards (by type of equipment)
 - (b) Availability at sea border crossing points of customs control equipment meeting agreed standards (by type of equipment)
 - (c) Availability at air border crossing points of customs control equipment meeting agreed standards (by type of equipment)
 - (d) Availability at postal border crossing points of customs control equipment meeting agreed standards (by type of equipment)
 - (e) Availability at rail border crossing points of customs control equipment meeting agreed standards (by type of equipment)
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