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From: General Secretariat of the Council
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Subject: Proposal for a Regulation of the European Parliament and of the Council on the European Border and Coast Guard and repealing Regulation (EC) No 2007/2004, Regulation (EC) No 863/2007 and Council Decision 2005/267/EC
- Outcome of the European Parliament's first reading
(Strasbourg, 4 to 7 July 2016)

I. INTRODUCTION

The Rapporteur, Mr Artis PABRIKS (EPP - LV), presented a report consisting of 173 amendments (amendments 1-173) to the proposed Regulation, on behalf of the Committee on Civil Liberties, Justice and Home Affairs.

In accordance with the provisions of Article 294 of the TFEU and the joint declaration on practical arrangements for the codecision procedure ¹, a number of informal contacts have taken place between the Council, the European Parliament and the Commission with a view to reaching an agreement on this dossier at first reading, thereby avoiding the need for second reading and conciliation.

¹ OJ C 145, 30.6.2007, p. 5.

In this context, the chair of the Committee on Civil Liberties, Justice and Home Affairs, Mr Claude MORAES (S & D - UK) presented one compromise amendment (amendment 179). This amendment had been agreed during the informal contacts referred to above.

In addition, four further amendments (amendments 174-177) were tabled by the ENF political group and a group of 40 Members, mainly from the Greens/ EFA and GEU/ NGL political groups, proposed one amendment (amendment 178), which aimed at rejecting the Commission proposal

II. VOTE

When it voted on 6 July 2016, the plenary adopted the compromise amendment (amendment 179) to the proposal for a Regulation. No other amendment was adopted.

The Commission's proposal as thus amended and the legislative resolution constitute the European Parliament's position at first reading. It reflects what had been previously agreed between the three institutions.

The Council should therefore be in a position to approve the position of the European Parliament, once the Legal / Linguistic Experts have examined the text. The legislative act would then be adopted in the wording which corresponds to the position of the Parliament at first reading ².

² The text of the amendment adopted and the European Parliament's legislative resolution are set out in the Annex. The amendment is presented in the form of a consolidated text, where changes to the Commission's proposal are highlighted in *bold and italics*. The symbol "■" indicates deleted text.

European Border and Coast Guard ***I

European Parliament legislative resolution of 6 July 2016 on the proposal for a regulation of the European Parliament and of the Council on the European Border and Coast Guard and repealing Regulation (EC) No 2007/2004, Regulation (EC) No 863/2007 and Council Decision 2005/267/EC (COM(2015)0671 – C8-0408/2015 – 2015/0310(COD))

(Ordinary legislative procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to Parliament and the Council (COM(2015)0671),
 - having regard to Article 294(2), and Article 77(2)(b) and (d) and Article 79(2)(c) of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C8-0408/2015),
 - having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
 - having regard to the opinion of the European Economic and Social Committee of 25 May 2016³,
 - having regard to the undertaking given by the Council representative by letter of 30 June 2016 to approve Parliament's position, in accordance with Article 294(4) of the Treaty on the Functioning of the European Union,
 - having regard to Rule 59 of its Rules of Procedure,
 - having regard to the report of the Committee on Civil Liberties, Justice and Home Affairs and the opinions of the Committee on Foreign Affairs, the Committee on Budgets and the Committee on Fisheries (A8-0200/2016),
1. Adopts its position at first reading hereinafter set out;
 2. Calls on the Commission to refer the matter to Parliament again if it intends to amend its proposal substantially or replace it with another text;
 3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

³ Not yet published in the Official Journal.

Position of the European Parliament adopted at first reading on 6 July 2016 with a view to the adoption of Regulation (EU) 2016/... of the European Parliament and of the Council on the European Border and Coast Guard and repealing Regulation (EC) No 2007/2004, Regulation (EC) No 863/2007 and Council Decision 2005/267/EC and amending Regulation (EU) 2016/399*

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)(b) and (d) and Article 79(2)(c) 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 Committee⁴,

Acting in accordance with the ordinary legislative procedure⁵,

* TEXT HAS NOT YET UNDERGONE LEGAL-LINGUISTIC FINALISATION.

⁴ Opinion of 25 May 2016 (not yet published in the Official Journal).

⁵ Position of the European Parliament of 6 July 2016.

Whereas:

- (1) On 25 and 26 June 2015⁶, the European Council called for wider efforts in resolving the *unprecedented migratory flows* in a comprehensive manner, including through the reinforcement of the management of borders to better manage growing mixed migratory flows. Furthermore, on 23 September 2015⁷, the European Council stressed the need to tackle the dramatic situation at the external borders as well as to strengthen the controls at those borders, notably through additional resources for the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union, the European Asylum Support Office and Europol, with human resources and technical contributions from Member States.

⁶ Meeting of the European Council, Conclusions of 25 and 26 June 2015.

⁷ Informal meeting of EU Heads of State or Government on migration, Statement of 23 September 2015.

- (2) The objective of Union policy in the field of external border management is to develop and implement European integrated border management at national and Union level, which is a necessary corollary to the free movement of persons within the Union and is a fundamental component of an area of freedom, security and justice. European integrated border management is central to improving migration management, *with a view to managing efficiently the crossing of the external borders, including addressing migratory challenges and potential future threats at those borders, thereby contributing to addressing serious crime with a cross-border dimension and to ensuring a high level of internal security within the Union, in full respect for fundamental rights, while safeguarding the free movement of persons therein.*

- (3) European integrated border management, based on the four-tier access model, comprises measures in third countries, such as under the common visa policy, measures with neighbouring third countries, border control measures at the external border itself as well as risk analysis, ■ measures within the *Schengen* area *and* return.
- (3a) ***When implementing European integrated border management, coherence with other policy objectives should be ensured including the proper functioning of cross-border transport.***
- (4) To ensure the effective implementation of the European integrated border management, a European Border and Coast Guard should be established ***and should be provided with the requisite financial and human resources and equipment.*** The European Border and Coast Guard, which comprises the European Border and Coast Guard Agency and national authorities which are responsible for border management, including coast guards to the extent that they carry out border control tasks, relies upon the common use of information, capabilities and systems at national level and the response of the European Border and Coast Guard Agency at Union level.

- (5) European integrated border management ***should be implemented as*** a shared responsibility ***by*** the European Border and Coast Guard Agency and the national authorities responsible for border management, including coast guards to the extent that they carry out ***maritime border surveillance operations and any other*** border control tasks. While Member States retain the primary responsibility for the management of their **■** external borders in their interest and in the interest of all Member States **■**, the European Border and Coast Guard Agency should ***support*** the application of Union measures relating to the management of the external borders by reinforcing, assessing and coordinating the actions of Member States which implement those measures.
- (5a) ***The European integrated border management does not alter the respective competences of the Commission and Member States in the customs area, in particular regarding controls, risk management and exchange of information.***

- (6) The development of the policy and legislation on external border control and return, ***including the development of a European Integrated Border Management strategy***, remains a responsibility of the Union institutions. Close coordination between the European Border and Coast Guard Agency and those institutions should be guaranteed.
- (7) The European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union, commonly referred to as Frontex, was established by Council Regulation (EC) No 2007/2004⁸. Since taking up its responsibilities on 1 May 2005, it has been successful in assisting Member States with implementing the operational aspects of external border management through joint operations and rapid border interventions, as well as risk analysis, information exchange, relations with third countries and the return of third-country nationals ***who are the subject of a return decision issued by a Member State***.

⁸ Council Regulation (EC) No 2007/2004 of 26 October 2004 establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (OJ L 349, 25.11.2004, p. 1).

- (8) *It is necessary to monitor the crossing of the external borders efficiently, address migratory challenges and potential future threats* at the external borders, *ensure* a high level of internal security within the Union, safeguard the functioning of the Schengen area *and respect* the overarching principle of solidarity. *In light of this*, it is necessary to reinforce the management of the external borders by building on the work of Frontex and further *developing* it into an Agency with a shared responsibility for the management of the external borders.

- (9) The tasks of *the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union* should therefore be expanded and to reflect those changes, *while remaining the same legal personality, with full continuity in all its activities and procedures*, it should be renamed European Border and Coast Guard Agency (*the Agency*), *to be referred to as Frontex*. The key role of the Agency should be to establish an operational and technical strategy for the implementation of an integrated border management at Union level, to oversee the effective functioning of border control at the external borders, to provide increased operational and technical assistance to Member States through joint operations and rapid border interventions, ensure the practical execution of measures in case of a situation requiring urgent action at the external borders *and technical and operational assistance in the support of search and rescue operations for persons in distress at sea*, as well as to organise, coordinate and conduct return operations and return interventions.

- (9a) *The Agency should carry out its tasks without prejudice to the responsibilities of the Member States with regard to the maintenance of law and order and the safeguarding of internal security.*
- (9b) *The Agency should carry out its tasks without prejudice to the competence of the Member States with regard to defence.*
- (9c) *The extended tasks and competence of the Agency should be balanced with strengthened fundamental rights safeguards and increased accountability.*
- (9d) *Member States may continue cooperation at an operational level with other Member States and/or third countries at external borders, including military operations with a law enforcement purpose, to the extent this cooperation is compatible with the action of the Agency.*

- (10) The European Border and Coast Guard Agency relies on the cooperation of Member States to be able to perform its tasks effectively. In this respect, it is important for the Agency and the Member States to act in good faith and to have a timely and accurate exchange of information. *No Member State should be obliged to supply information the disclosure of which it considers contrary to the essential interests of its security.*
- (10a) *Member States should also, in their own interests and in the interests of other Member States, enter data into the European databases and ensure that the data are accurate, up-to-date and obtained and entered lawfully.*

- (11) The █ Agency should prepare general and tailored risk analysis based on a common integrated risk analysis model, to be applied by the Agency itself and by Member States. The █ Agency should, based also on information provided by Member States, provide adequate information █ covering all aspects relevant to European integrated border management, especially border control, return, irregular secondary movements of third country nationals within the Union, prevention of cross-border crime including facilitation of *unauthorised border crossing*, trafficking in human beings, terrorism *and threats of hybrid nature*, as well as the situation at neighbouring third countries, so as to allow for appropriate measures to be taken or to tackle identified threats and risks with a view to improving the integrated management of *the* external borders.

(11a) *Given its activity at the external borders, the Agency should contribute to preventing and detecting serious crime with a cross-border dimension, such as the migrant smuggling, trafficking in human beings and terrorism, where it is appropriate for it to act and where it has obtained relevant information through its activities. It should coordinate its activities with Europol as the agency responsible for supporting and strengthening Member States' actions and their cooperation in preventing and combating serious crime affecting two or more Member States. Cross-border crimes necessarily entail a cross-border dimension. Such a cross-border dimension is characterised by crimes linked to the unauthorised crossing of the external border, including trafficking in human beings or smuggling of migrants, where there is a direct link with the crossing of the external border notwithstanding the provisions of Article 1(2) of Council Directive 2002/90/EC which allow Member States not to impose sanctions where the aim of the behaviour is to provide humanitarian assistance to migrants.*

- (12) In a spirit of shared responsibility, the role of the █ Agency should be to regularly monitor the management of the external borders. The Agency should ensure proper and effective monitoring not only through risk analysis, information exchange and Eurosur, but also through presence of experts from its own staff in Member States. The Agency should therefore be able to deploy liaison officers to █ Member States for a period of time during which the liaison officer reports to the Executive Director. The report of the liaison officers should form part of the vulnerability assessment.
- (13) The █ Agency should carry out a vulnerability assessment, *based on objective criteria*, to assess the capacity *and readiness* of the Member States to face challenges at their external borders, including by assessing the equipment, *infrastructure, staff, budget* and *financial* resources of Member States as well as their contingency plans to address possible crises at the external borders. Member States should take *measures* to address any deficiencies identified in that assessment. The Executive Director █ should identify the measures to be taken *and recommend them to* the Member State concerned and should set a time-limit within which those measures should be taken. █ Where the necessary measures are not taken within the set time-limit, the matter needs to be referred to the Management Board for a further decision.

- (13a) *If the Agency is not provided with accurate and speedy information necessary for carrying out a vulnerability assessment, it may take that fact into account when performing the vulnerability assessment, unless duly justified reasons are provided for withholding the data.*
- (14) The █ Agency should organise the appropriate technical and operational assistance to Member States so as to reinforce their capacity to implement their obligations with regard to the control of the external borders, and to face challenges at the external border resulting from *illegal* immigration or cross-border crime *without prejudice to the national responsible authorities' competence to initiate criminal investigations*. In this respect, the █ Agency should, at the request of a Member State or on its own initiative, organise and coordinate joint operations for one or more Member States and deploy European Border and Coast Guard Teams as well as the necessary technical equipment, and it may deploy experts from its own staff.

- (15) In cases where there is a specific and disproportionate pressure at the external borders, the Agency should, at the request of a Member State or on its own initiative, organise and coordinate rapid border interventions and deploy European Border and Coast Guard Teams from a rapid *reaction* pool as well as technical equipment. Rapid border interventions should provide reinforcement *for a limited period of time* in situations where immediate response is required and where such an intervention would provide an effective response. To ensure the effective operation of such intervention, Member States should make border guards and other relevant staff available to the rapid *reaction* pool *and provide the necessary technical equipment. The Agency and the Member State concerned should agree upon an operational plan.*

- (16) *Where a Member State faces disproportionate migratory challenges at particular areas of its external border characterised by large influxes of mixed migratory flows* the Member States should be able to rely on the increased operational and technical reinforcement *in hotspot areas* by the migration management support teams composed of teams of experts deployed from Member States by the █ Agency and the European Asylum Support Office, and from Europol or other relevant Union Agencies, as well as experts from the staff of the █ Agency. The █ Agency should assist the Commission in the coordination among the different agencies on the ground.
- (16a) *Member States should ensure that those other authorities which are likely to receive applications for international protection such as the police, border guards, immigration authorities and personnel of detention facilities have the relevant information and that their personnel receive the necessary level of training which is appropriate to their tasks and responsibilities and instructions to inform applicants as to where and how applications for international protection may be lodged.*

(16b) In hotspot areas the different agencies and Member States should operate within their respective mandates and powers. The Commission, in cooperation with the other relevant agencies, should ensure the compliance of activities in the hotspot areas with the relevant Union acquis, including the Common European Asylum System and fundamental rights.

(17) In cases where a Member State does not take the necessary *measures* in line with the vulnerability assessment or in the event of disproportionate █ pressure at the external borders *where a Member State has not requested the Agency for sufficient support or is not taking the necessary actions for the implementation of these measures*, rendering the control at the external border ineffective to an extent which risks putting in jeopardy the functioning of the Schengen area, a unified, rapid and effective response should be delivered at Union level. For *the purpose of mitigating these risks*, and to ensure better coordination at Union level, the Commission should identify *and propose to the Council* the measures to be implemented by the █ Agency and require the Member State concerned to cooperate with the Agency in the implementation of those measures. *The implementing power to adopt such a decision should be conferred on the Council because of the potential politically-sensitive nature of the measures to be decided, often touching on national executive and enforcement powers.* The European Border and Coast Guard Agency should then determine the actions to be taken for the practical execution of the measures indicated in the *Council* decision, and an operational plan should be drawn up with the Member State concerned. *In case where a Member State does not comply within 30 days with this Council decision and does not cooperate with the Agency in the implementation of the measures contained in this decision, the Commission may trigger the application of the specific procedure where exceptional circumstances put the overall functioning of the area without internal border control at risk provided for in Article 29 of Regulation (EU) 2016/399. Therefore, Regulation (EU) 2016/399 should be amended accordingly.*

- (18) The █ Agency should have the necessary equipment and staff at its disposal to be deployed in joint operations or rapid border interventions. To this end, when launching rapid border interventions at the request of a Member State or in the context of a situation requiring urgent action, the █ Agency should be able to deploy European Border and Coast Guard Teams from a rapid *reaction* pool which should be a standing corps composed of █ border guards *and other relevant staff* in the Member States, which should amount to a minimum of 1 500. The deployment of the European Border and Coast Guard Teams from the rapid *reaction* pool should be immediately complemented by additional European Border and Coast Guard Teams *where necessary*.
- (18a) *Annex 1 sets out the contributions of Member States to this rapid reaction pool on the basis of pledges in light of the current circumstances. If those circumstances change substantially and structurally, including when a decision on the lifting of controls on their internal borders pursuant to the relevant provisions of the relevant Acts of Accession has been taken, the Commission should propose the appropriate amendments to this Annex.*

- (19) Having regard to the rapidity with which deployment of equipment and staff would need to take place in particular at areas of the external borders facing sudden large influxes of migratory flow, the █ Agency should also be able to deploy its own technical equipment which it should acquire itself or in co-ownership with a Member State. That technical equipment should be made available to the Agency upon its request. The █ Agency should also manage a pool of technical equipment provided by the Member States, based on the needs identified by the █ Agency and which should be completed by the means of transport and operating equipment purchased by Member States under the Specific Actions of the Internal Security Fund.
- (20) On 15 October 2015, the European Council called for enlarging the mandate of *Frontex on return to include the right to organize joint return operations on its own initiative, and enhance its role regarding the acquisition of travel documents for returnees.*

- (21) The █ Agency should step up its assistance to Member States for returning █ third-country nationals, subject to the Union return policy and in compliance with Directive 2008/115/EC █ . In particular, it should coordinate and organise return operations from one or more Member States and it should organise and conduct return interventions to reinforce the return system of Member States requiring increased technical and operational assistance when complying with their obligation to return █ third-country nationals in accordance with that Directive.
- (21a) *The Agency should provide the necessary assistance to Member States in organising joint return operations and return interventions of third country nationals who are the subject of return decisions issued by a Member State without entering into the merits of return decisions issued by the Member States, and in full respect for fundamental rights. In addition, the Agency should assist Member States in the acquisition of travel documents for return, in cooperation with the authorities of the relevant third countries.*

(21b) The assistance to Member States in carrying out return procedures should include the provision of practical information on third countries of return relevant for the implementation of this Regulation, such as the provision of contact details or other logistical information necessary for the smooth conduct of return operations.

For the purposes of taking return decisions, the Agency should not be involved in the provision of information to Member States on third countries of return.

(21c) The possible existence of an arrangement between a Member State and a third country does not absolve the Agency or the Member States from their obligations under Union or international law, in particular as regards compliance with the principle of non-refoulement.

- (22) The █ Agency should establish pools of forced return monitors, forced return experts and return specialists made available by Member States, who should be deployed during return operations and that should form part of tailor-made European Return Intervention Teams deployed in return interventions. *The pools should include staff with specific expertise in child protection.* The █ Agency should provide them with the necessary training.
- (22a) *In accordance with international law instruments like the UN Convention of the Rights of the Child, any individual below the age of 18 will be considered as a child under this Regulation. The child's best interests are to be a primary consideration in the activities of the Agency.*
- (22b) *Special provision should be made for staff involved in activities relating to returns to specify their tasks, powers and responsibilities. Special instructions should also be issued with regard to the power of the pilots in charge of aircraft and the extension of the criminal jurisdiction of the country of registration of the aircraft under international aviation law, in particular the Tokyo Convention on Offences and certain other acts committed on board aircraft.*

- (23) The █ Agency should develop specific training tools, *including specific training in the protection of children*, and it should provide training at Union level for national instructors of border guards and additional training and seminars related to *integrated border management tasks, including* for officers of the competent national bodies. *This should include training on relevant Union and international law, including on fundamental rights*. The Agency should be authorised to organise training activities in cooperation with Member States and third countries on their territory.
- (24) The █ Agency should monitor and contribute to the developments in research relevant for *European integrated border management* and it should disseminate this information to *the European Parliament*, the Member States, and to the Commission.
- (25) Effective implementation of an integrated management of the external borders necessitates regular, swift and reliable exchange of information among the Member States █. The █ Agency should develop and operate information systems facilitating such exchange in accordance with Union data protection legislation. *It is important that Member States provide the Agency promptly with complete and accurate information necessary for the Agency to perform its tasks.*

- (26) For the purpose of fulfilling its mission and to the extent required for the accomplishment of its tasks, the █ Agency may cooperate with Union institutions, bodies, offices and agencies as well as with international organisations in matters covered by this Regulation in the framework of working arrangements concluded in accordance with Union law and policy. Those working arrangements should receive the Commission's prior approval.
- (27) National authorities carrying out coast guard functions are responsible for a wide range of tasks, ***which may include*** maritime safety, security, search and rescue, border control, fisheries control, customs control, general law enforcement and environmental protection. The █ Agency, the European Fisheries Control Agency established by Council Regulation (EC) No 768/2005⁹ and the European Maritime Safety Agency established by Regulation (EC) No 1406/2002 of the European Parliament and of the Council¹⁰ should therefore strengthen their cooperation both with each other and with the national authorities carrying out coast guard functions to increase maritime situational awareness as well as to support coherent and cost-efficient action. ***Synergies between the various actors in the maritime environment should be in line with the European integrated border management and maritime security strategy.***

⁹ 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).

¹⁰ 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).

(27a) *The implementation of this Regulation does not affect the division of competence between the Union and the Member States under the Union Treaties or the obligations of Member States under international conventions such as the United Nations Convention on the Law of the Sea, the International Convention for the Safety of Life at Sea, the International Convention on Maritime Search and Rescue, the International Convention for the Prevention of Pollution from Ships, the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers and other relevant maritime international instruments.*

- (28) The █ Agency should facilitate and encourage *technical and* operational cooperation between Member States and third countries in the framework of the external relations policy of the Union, including by coordinating operational cooperation between Member States and third countries in the field of management of *the* external borders and by deploying liaison officers to third countries, as well as by cooperating with the authorities of third countries on return, including as regards the acquisition of travel documents. In their cooperation with third countries, the █ Agency and Member States should comply with *Union law, including with regard to the protection of fundamental rights and the principle of non-refoulement at all times and* also when the cooperation with third countries takes place on the territory of those countries. *In order to increase transparency and accountability, the Agency should report on cooperation with third countries in its annual report.*

(28a) The European Border and Coast Guard and the Agency should fulfil their tasks in full respect for fundamental rights, in particular the Charter of Fundamental Rights of the European Union (the Charter), the European Convention for the Protection of Human Rights and Fundamental Freedoms, relevant international law, including the United Nations Convention on the Rights of the Child, the Convention on the Elimination of all Forms of Discrimination Against Women, the Convention Relating to the Status of Refugees and obligations related to access to international protection, in particular the principle of non-refoulement, the United Nations Convention on the Law of the Sea, the International Convention for the Safety of Life at Sea, and the International Convention on Maritime Search and Rescue. In accordance with Union law and those provisions the Agency should assist Member States in conducting search and rescue operations in order to protect and save lives whenever and wherever so required.

- (28b) *Given the increased number of its tasks, the Agency should further develop and implement a strategy to monitor and ensure the protection of fundamental rights. To that end it should provide its Fundamental Rights Officer with adequate resources and staff corresponding to its mandate and size. The Fundamental Rights Officer should have access to all information necessary to fulfil her or his task. The Agency should use its role to actively promote the application of the Union acquis relating to the management of the external borders, including with regard to respect for fundamental rights and international protection.*
- (29) This Regulation respects the fundamental rights and observes the principles recognised by Articles 2 and 6 of the Treaty on European Union and reflected in the Charter of Fundamental Rights of the European Union. In particular, this Regulation seeks to ensure full respect for human dignity, the right to life, the right to liberty and security, the right to the protection of personal data, the right to access to asylum, the right to effective remedy, the rights of the child, the prohibition of torture and of inhuman or degrading treatment or punishment, the prohibition of trafficking in human beings, and to promote the application of the principles of non-discrimination and *non-refoulement*.

- (30) This Regulation establishes a complaint mechanism for the European Border and Coast Guard Agency, in cooperation with the Fundamental Rights Officer, to monitor and ensure the respect for fundamental rights in all the activities of the Agency. This should be an administrative mechanism whereby the Fundamental Rights Officer should be responsible for handling complaints received by the Agency in accordance with the right to good administration. The Fundamental Rights Officer should review the admissibility of a complaint, register admissible complaints, forward all registered complaints to the Executive Director, forward complaints concerning *members of the teams* to the home Member State and register the follow-up by the Agency or that Member State. ***The mechanism should be effective, ensuring that complaints are properly followed up. The complaint mechanism is without prejudice to access to administrative and judicial remedies and does not constitute a requirement for seeking such remedies.*** Criminal investigations should be conducted by the Member States. ***In order to increase transparency and accountability, the Agency should report on the complaints mechanism in its annual report, including the number of complaints received, the types of fundamental rights violation, the operation concerned and, where possible, the follow-up measures taken by the Agency and Member States.***

- █
- (32) The █ Agency should be independent as regards operational and technical matters and have legal, administrative and financial autonomy. To that end, it is necessary and appropriate that it should be a Union body having legal personality and exercising the implementing powers, which are conferred upon it by this Regulation.
- (33) The Commission and the Member States should be represented within a Management Board to exercise █ oversight over the █ Agency. The Board should, where possible, consist of the operational heads of the national services responsible for border guard management or their representatives. ***The parties represented in the Management Board should make efforts to limit turnover of their representatives, in order to ensure continuity of the board's work.*** This Board should be entrusted with the necessary powers to establish the budget, verify its execution, adopt the appropriate financial rules, establish transparent working procedures for decision making by the █ Agency and appoint the Executive Director and the Deputy Executive Director. The Agency should be governed and operated ***taking into account*** the principles of the common approach on Union decentralised agencies adopted on 19 July 2012 by the European Parliament, the Council and the European Commission.

- (34) In order to guarantee the autonomy of the █ Agency, it should be granted an autonomous budget whose revenue comes essentially from a contribution from the Union. The Union budgetary procedure should be applicable as far as the Union contribution and any other subsidies chargeable to the general budget of the European Union are concerned. The auditing of accounts should be undertaken by the Court of Auditors.
- (35) Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council¹¹ should apply without restriction to the █ Agency, which should accede to the Inter-institutional Agreement of 25 May 1999 between the European Parliament, the Council of the European Union and the Commission of the European Communities concerning internal investigations by the European Anti-Fraud Office (OLAF)¹².
- (36) Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents¹³ should apply to the █ Agency. ***The Agency should be as transparent as possible about its activities, without jeopardising the attainment of the objective of its operations. It should make public information on all of its activities, and should ensure that the public and any interested party are rapidly given information with regard to its work.***

¹¹ 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).

¹² OJ L 136, 31.5.1999, p. 15.

¹³ Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ L 145, 31.5.2001, p. 43).

- (36a) *The Agency should also report on its activities to the fullest extent to the European Parliament and the Council.*
- (37) Any processing of personal data by the Agency within the framework of this Regulation should be conducted in accordance *with* Regulation (EC) No 45/2001 of the European Parliament and of the Council¹⁴.
- (38) Any processing of personal data by Member States within the framework of this Regulation should be conducted in accordance with Directive 95/46/EC of the European Parliament and of the Council¹⁵. *In cases where the processing of data is necessary primarily for the purpose of ensuring a high level of internal security within the Union, especially in the context of actions mentioned in Articles 10, 46 and 51, Council Framework Decision 2008/977/JHA¹⁶ applies. Any processing of data should respect the principles of necessity and proportionality.*

¹⁴ Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (OJ L 8, 12.1.2001, p. 1).

¹⁵ Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (OJ L 281, 23.11.1995, p. 31).

¹⁶ Council Framework Decision 2008/977/JHA of 27 November 2008 on the protection of personal data processed in the framework of police and judicial cooperation in criminal matters (OJ L 350, 30.12.2008, p. 60).

(39) Since the objectives of this Regulation, namely the development and implementation of a system of integrated management of the external borders, thus also ensuring the proper functioning of the Schengen area, cannot be sufficiently achieved by the Member States acting in an uncoordinated manner but can rather, because of the absence of controls at internal borders and in view of the significant migratory *challenges* at the external borders and the need *to monitor efficiently the crossing of those borders, thereby contributing to* a high level of internal security within the Union, 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 those objectives.

- (39a) *The external borders referred to are the ones to which the provisions of Title II of Regulation (EU) 2016/399 apply, which includes the external borders of the Schengen Member States in accordance with Article 1 of Protocol 19 on the Schengen acquis integrated into the framework of the European Union.*
- (40) 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*¹⁷, which fall within the area referred to in point A of Article 1 of Council Decision 1999/437/EC¹⁸. The arrangement between the European Community and the Republic of Iceland and the Kingdom of Norway on the modalities of the participation by those States in the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union¹⁹ provides for rules on the participation by those countries in the work of the Agency, including provisions on financial contributions and staff.

¹⁷ OJ L 176, 10.7.1999, p. 36.

¹⁸ 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).

¹⁹ OJ L 188, 20.7.2007, p. 19.

- (41) As regards Switzerland, this Regulation constitutes a development of the 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*²⁰ which fall within the area referred to in **point A of Article 1** of Decision 1999/437/EC read in conjunction with Article 3 of Council Decision 2008/146/EC²¹.
- (42) 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*²² which fall within the area referred to in **point A of Article 1** of Decision 1999/437/EC read in conjunction with Article 3 of Council Decision 2011/350/EU²³.

²⁰ OJ L 53, 27.2.2008, p. 52.

²¹ 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).

²² OJ L 160, 18.6.2011, p. 21.

²³ 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 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).

- (43) The arrangement between the European Community, of the one part, and the Swiss Confederation and the Principality of Liechtenstein, of the other part, on the modalities of the participation by those States in the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union²⁴ provides for rules on the participation by those countries in the work of the Agency, including provisions on financial contributions and staff.
- (44) In accordance with Articles 1 and 2 of the Protocol on the position of Denmark annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, 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* under the provisions of Title IV of Part Three of the Treaty establishing the European Community, Denmark should, in accordance with Article 5 of the said Protocol, decide within a period of six months after the Council has adopted this Regulation whether it will implement it in its national law or not.

²⁴ OJ L 243, 16.9.2010, p. 4.

- (45) This Regulation constitutes a development of provisions of the Schengen *acquis* in which the United Kingdom does not take part, in accordance with Council Decision 2000/365/EC²⁵; the United Kingdom is therefore not taking part in the adoption of this Regulation and is not bound by it or subject to its application.
- (46) This Regulation constitutes a development of provisions of the Schengen *acquis* in which Ireland does not take part, in accordance with Council Decision 2002/192/EC²⁶; Ireland is therefore not taking part in the adoption of this Regulation and is not bound by it or subject to its application.

²⁵ Council Decision 2000/365/EC of 29 May 2000 concerning the request of the United Kingdom of Great Britain and Northern Ireland to take part in some of the provisions of the Schengen (OJ L 131, 1.6.2000, p. 43).

²⁶ 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).

- (47) The Agency should facilitate the organisation of specific activities in which the Member States may avail themselves of the expertise and facilities which Ireland and the United Kingdom may be willing to offer, in accordance with modalities to be decided on a case-by-case basis by the Management Board. To that end, representatives of Ireland and the United Kingdom may be invited to attend meetings of the Management Board which allow them to participate fully in the preparation of such specific activities.
- (48) A controversy exists between the Kingdom of Spain and the United Kingdom on the demarcation of the borders of Gibraltar.

- (49) The suspension of the applicability of this Regulation to the borders of Gibraltar does not imply any change in the respective positions of the States concerned.
- (50) The European Data Protection Supervisor was consulted in accordance with Article 28(2) of Regulation (EC) No 45/2001 and delivered an opinion on 18 March 2016²⁷.
- (51) This Regulation aims to amend and expand the provisions of Regulation (EC) No 2007/2004, Regulation (EC) No 863/2007²⁸ of the European Parliament and of the Council and Council Decision 2005/267/EC²⁹. Since the amendments to be made are of substantial number and nature, those acts should, in the interests of clarity, be replaced and repealed. References to the repealed regulations should be construed as references to this Regulation,

HAVE ADOPTED THIS REGULATION:

²⁷ OJ C 186, 25.5.2016, p. 10.

²⁸ Regulation (EC) No 863/2007 of the European Parliament and of the Council of 11 July 2007 establishing a mechanism for the creation of Rapid Border Intervention Teams and amending Council Regulation (EC) No 2007/2004 as regards that mechanism and regulating the tasks and powers of guest officers (OJ L 199, 31.7.2007, p. 30).

²⁹ Council Decision 2005/267/EC of 16 March 2005 establishing a secure web-based Information and Coordination Network for Member States' Migration Management Services (OJ L 83, 1.4.2005, p. 48).

CHAPTER I
EUROPEAN BORDER AND COAST GUARD

Article 1

Subject matter

This Regulation establishes a European Border and Coast Guard **■** to ensure a European integrated border management at the external borders with a view to managing ***efficiently the crossing of the external borders, including addressing migratory challenges and potential future threats at those borders, thereby contributing to addressing serious crime with a cross-border dimension, in order to ensure*** a high level of internal security within the Union, ***in full respect for fundamental rights,*** while safeguarding the free movement of persons therein.

Article 2
Definitions

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

- (1) ‘external borders’ means *external borders as defined in point (2) of Article 2 of Regulation (EU) 2016/399 of the European Parliament and of the Council*, to which **■** Title II *thereof*³⁰ *applies*;
- (2) ‘border control’ means border control as defined in point **10** of Article 2 of Regulation (EU) 2016/399;
- (2a) ‘border guard’ means border guard as defined in point **14** of Article 2 of Regulation (EU) 2016/399;
- (3) ‘European Border and Coast Guard Teams’ mean teams of border guards and other relevant staff from participating Member States, including *border guards and other relevant staff* that are seconded *as national experts* by Member States to the Agency, to be deployed during joint operations, rapid border interventions as well as in the framework of migration management support teams;

³⁰ 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.).

- (4) ‘host Member State’ means a Member State in which a joint operation or a rapid border intervention, a return operation or a return intervention takes place *or a migration management support team is deployed*, or from which it is launched;
- (5) ‘home Member State’ means the Member State of which a member of the European Border and Coast Guard Teams is a border guard or other relevant staff member;
- (6) ‘participating Member State’ means a Member State which participates in a joint operation, rapid border intervention, return operation, return intervention or *a migration management support team* by providing technical equipment, border guards and other relevant staff deployed as part of the European Border and Coast Guard Teams, as well as a Member States which participate in return operations or return interventions by providing technical equipment or staff, *but which is not a host Member State*;

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- (8) ‘members of the teams’ mean members of the European Border and Coast Guard Teams or teams of staff involved in return-related tasks participating in return operations or return interventions;
 - (9) ‘migration management support teams’ mean teams of experts which provide operational and technical reinforcement to Member States at hotspot areas and which are composed of experts deployed from Member States by the European Border and Coast Guard Agency and the European Asylum Support Office, and from Europol or other relevant Union Agencies;
 - (9a) ***“Hotspot area” means an area where the host Member State, the Commission, relevant EU agencies and participating Member States cooperate with the aim of managing an existing or potential disproportionate migratory challenge characterized by a significant increase in the number of arriving migrants at the external border;***

- (10) ‘return’ means return as defined in point 3 of Article 3 of Directive 2008/115/EC;
- (11) ‘return decision’ means *an administrative or judicial decision or act, stating or declaring the stay of a third-country national to be illegal and imposing or stating an obligation to return, respecting* Directive 2008/115/EC;
- (12) ‘returnee’ means an illegally staying third-country national *who is the* subject of a return decision *issued by a Member State*;
- (13) ‘return operation’ means an operation ■ , that is coordinated by the Agency and involves technical and operational reinforcement being provided by one or more Member States under which returnees from one or more Member States are returned either *on a forced or voluntary basis*;
- (14) ‘return intervention’ means an *activity of the Agency providing Member States with* enhanced technical and operational assistance consisting of the deployment of European Return Intervention Teams to Member States and the organisation of return operations.
- (14a) ‘*Cross-border crime*’ means *any serious crime with a cross- border dimension committed at, along or is related to the external borders.*

Article 3

European Border and Coast Guard

1. The European Border and Coast Guard Agency (*the Agency*) and the national authorities of Member States which are responsible for border management, including coast guards to the extent that they carry out border control tasks, shall constitute the European Border and Coast Guard.
2. The European Border and Coast Guard Agency, *by decision of the Management Board based on a proposal of the Executive Director*, shall establish an operational and technical strategy for the European integrated border management, *taking into account, where justified, the specific situation of the Member States, in particular their geographical location. This strategy shall be in line with Article 4 of this Regulation.* It shall promote and *support* the implementation of European integrated border management in all Member States.

3. The national authorities which are responsible for border management, including coast guards to the extent that they carry out border control tasks, shall establish their national strategies for integrated border management. Those national strategies shall be *in line* with *Article 4 and the strategy referred to* in paragraph 2.

Article 4

European integrated border management

European integrated border management shall consist of the following components:

- (a) border control, including measures *to facilitate legitimate border crossings and measures* related to the prevention *and* detection of cross-border crime, *such as migrant smuggling, trafficking in human beings and terrorism*, where appropriate, *and measures related to the referral of persons who are in need of, or wish to apply for, international protection*;
- (ab) *search and rescue operations for persons in distress at sea in accordance with Regulation (EU) No 656/2014 and with international law, taking place in situations which may arise during border surveillance operations at sea*;
- (b) analysis of the risks for internal security and analysis of the threats that may affect the functioning or security of the external borders;

- (ba) *cooperation between Member States supported and coordinated by the European Border and Coast Guard Agency,*
- (c) inter-agency cooperation among the national authorities in each Member State which are responsible for border control or for other tasks carried out at the border and among the relevant Union institutions, agencies, bodies and offices; including the regular exchange of information through existing information exchange tools, *such as* the European Border Surveillance System (‘Eurosur’) established by Regulation (EU) No 1052/2013 of the European Parliament and of the Council³¹;
- (d) cooperation with third countries in the areas ■ covered by this Regulation, focusing in particular on neighbouring countries and on those third countries which have been identified through risk analysis as being countries of origin and/or transit for *illegal* immigration;

³¹ 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).

- (e) technical and operational measures within the *Schengen* area which are related to border control and designed to *better address illegal* immigration and to counter cross-border crime;
- (f) return of third-country nationals *who are the subject of return decisions issued by a Member State*;
- (g) use of state-of-the-art technology including large-scale information systems;
- (h) a quality control mechanism, *in particular the Schengen Evaluation mechanism and possible national mechanisms*, to ensure the implementation of Union legislation in the area of border management;
- (i) *Solidarity mechanisms, in particular Union funding instruments.*

Article 5

Shared responsibility

1. The European Border and Coast Guard shall implement the European integrated border management as a shared responsibility of the █ Agency and of the national authorities responsible for border management, including coast guards to the extent that they carry out *maritime border surveillance operations and any other* border control tasks. *Member States shall retain primary responsibility for the management of their section of the external border.*
 - 1a. *Member States shall ensure the management of their external borders, in their interests and in the interest of all Member States, in full compliance with Union law and in line with the technical and operational strategy referred to in Article 3(2), and in close cooperation with the Agency.*
2. The █ Agency shall *support* the application of Union measures relating to the management of external borders by reinforcing, assessing and coordinating the actions of Member States in the implementation of those measures, and in return. █

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Chapter II

European Border And Coast Guard Agency

Section 1

Tasks of the European Border and Coast Guard Agency

Article 6

European Border and Coast Guard Agency

1. To ensure a coherent European integrated border management **■**, the Agency shall facilitate and render more effective the application of existing and future Union measures relating to the management of external borders, in particular the Schengen Borders Code established by Regulation (EU) 2016/399.
 - 1a. ***The Agency shall contribute, including through the exchange of good practices, to the continuous and uniform application of Union law, including the Union acquis on fundamental rights, at all external borders.***
2. The European Border and Coast Guard Agency ('the Agency') shall be the new name for the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union established by Council Regulation (EC) No 2007/2004. The activities shall henceforth be based on this Regulation.

Article 6a
Accountability

The Agency shall be accountable to the European Parliament and to the Council, in accordance with this Regulation.

Article 7

Tasks

1. In view of contributing to an efficient, high and uniform level of border control and return, the Agency shall perform the following tasks:
 - (a) ■ monitor migratory flows and to carry out risk analysis as regards all aspects of integrated border management;
 - (b) carry out a vulnerability assessment including the assessment of the capacity *and readiness* of Member States to face threats and *challenges* at the external borders;

- (ba) *monitor the management of the external borders through liaison officers of the Agency in Member States;*
- (c) assist Member States in circumstances requiring increased technical and operational assistance at the external borders by coordinating and organising joint operations, taking into account that some situations may involve humanitarian emergencies and rescue at sea *in accordance with Union and international law;*
- (d) assist Member States in circumstances requiring increased technical and operational assistance at the external borders, by launching rapid border interventions at the external borders of those Member States facing specific and disproportionate *challenges*, taking into account that some situations may involve humanitarian emergencies and rescue at sea *in accordance with Union and international law;*

- (da) *in accordance with Regulation (EU) No 656/2014 and international law provide technical and operational assistance to Member States and third countries, in support of search and rescue operations for persons in distress at sea which may arise during border surveillance operations at sea;*
- (e) set up and deploy European Border and Coast Guard Teams, including a rapid *reaction* pool, that are to be deployed during joint operations and rapid border interventions and in the framework of the migration management support teams;
- (f) set up a technical equipment pool to be deployed in joint operations, rapid border interventions and in the framework of migration management support teams, as well as in return operations and return interventions;
- (g) ***Within*** the framework of the migration management support teams at hotspot areas:
- (1) deploy European Border and Coast Guard Teams and technical equipment to provide assistance in screening, *debriefing*, identification and fingerprinting;
 - (2) *establish in cooperation with the European Asylum Support Office (EASO) and national authorities a procedure for the provision of initial information to and the referral of persons who are in need of, or wish to apply for, international protection;*

- (h) support the development of technical standards for equipment, especially for tactical level command, control and communication as well as technical surveillance to ensure interoperability at Union and national level;
- (i) deploy the necessary equipment and ***border guards and other relevant*** staff ***of*** the rapid ***reaction*** pool for the practical execution of the measures needed to be taken in a situation requiring urgent action at the external borders;
- (j) assist Member States in circumstances requiring increased technical assistance and operational assistance for implementing the obligation to return ***those*** third-country nationals, ***who are the subject of return decisions***, including through the coordination or organisation of return operations;
- (ja) ***within the respective mandates of the agencies concerned, cooperate with Europol and Eurojust and provide support to Member States in circumstances requiring increased technical and operational assistance at the external borders in the fight against organized cross-border crime and terrorism;***

- (k) set up pools of forced return monitors, forced return escorts and return specialists;
- (l) set up and deploy European Return Intervention Teams during return interventions;
- (m) assist Member States on training of national border guards, *other relevant staff* and experts on return, including the establishment of common training standards;
- (n) participate in the development and management of research and innovation activities relevant for the control and surveillance of external borders, including the use of advanced surveillance technology ■ and develop pilot projects regarding matters covered by this Regulation;
- (o) develop and operate, in accordance with Regulation (EC) No 45/2001 and Framework Decision 2008/977/JHA, information systems that enable swift and reliable exchanges of information regarding emerging risks at the management of the external borders, *illegal* immigration and return, in close cooperation with the Commission, Union agencies, bodies and offices as well as the European Migration Network established by Council Decision 2008/381/EC³²;

³² Council Decision 2008/381/EC of 14 May 2008 establishing a European Migration Network (OJ L 131, 21.5.2008, p. 7).

- (p) provide the necessary assistance for the development and operation of a European border surveillance system and, as appropriate, to the development of a common information-sharing environment, including interoperability of systems, in particular by developing, maintaining and coordinating the Eurosur framework in accordance with Regulation (EU) No 1052/2013;
- (q) cooperate with the European Fisheries Control Agency and the European Maritime Safety Agency, *each within their mandate*, to support the national authorities carrying out coast guard functions, *as set out in Article 52*, by providing services, information, equipment and training, as well as by coordinating multipurpose operations;
- (r) assist Member States and third countries in the context of *technical and* operational cooperation between them in the *matters covered by this Regulation*.

2. Member States may continue cooperation at an operational level with other Member States and/or third countries **■**, where such cooperation is compatible with the *tasks* of the Agency. Member States shall refrain from any activity which could jeopardise the functioning of the Agency or the attainment of its objectives. Member States shall report to the Agency on that operational cooperation with other Member States and/or third countries at the external borders and in the field of return. The Executive Director of the Agency ('the Executive Director') shall inform the Management Board of the Agency ('the Management Board') on those matters on a regular basis and at least once a year.
3. (a) The Agency *shall* engage in communication activities on its own initiative in the fields within its mandate. ***It shall provide the public with accurate and comprehensive information about its activities.***
- (b) Communication activities shall not be detrimental to the tasks referred to in paragraph 1, ***in particular by revealing operational information which, if made public, would jeopardise attainment of the objective of operations. Communication activities shall be carried out without prejudice to Article 49 and in accordance with*** relevant communication and dissemination plans adopted by the Management Board.

Section 2
Monitoring and Crisis Prevention

Article 8
Duty to cooperate in good faith

The Agency and the national authorities which are responsible for border management **and return**, including coast guards to the extent that they carry out border control tasks, shall be subject to a duty to cooperate in good faith, and an obligation to exchange information.

Article 9
■ Obligation to exchange information

In order to perform the tasks conferred on them by this Regulation, in particular for the Agency to monitor the migratory flows towards and within the Union, to carry out risk analysis and to perform the vulnerability assessment, ***the national authorities which are responsible for border management and return, including coast guards to the extent that they carry out border control tasks, and the Agency shall, in accordance with this Regulation and other relevant Union and national law regarding the exchange of information, share in a timely and accurate manner all the information necessary.***

Article 10

Monitoring of migratory flows and risk analysis

1. The Agency shall **■** monitor migratory flows towards and within the Union, *trends and other possible challenges at the external border of the Union*. For this purpose, the Agency shall, *by a decision of the Management Board based on a proposal of the Executive Director, establish* a common integrated risk analysis model, which shall be applied by the Agency and the Member States, *and carry out the vulnerability assessment in accordance with Article 12*.
2. The Agency shall prepare general risk analyses, which shall be submitted to the European Parliament, the Council and the Commission *in accordance with Article 49*, and tailored risk analyses for operational activities.

3. The risk analysis prepared by the Agency shall cover all aspects relevant to the European integrated border management █ with a view to developing a pre-warning mechanism █ .
4. Member States shall provide the Agency with all necessary information regarding the situation, trends and possible threats at the external borders and in the field of return. Member States shall regularly or upon the request of the Agency provide it with all relevant information such as statistical and operational data collected in relation to the implementation of the Schengen *acquis* as well as information █ from the analysis layer of the national situational picture established in accordance with Regulation (EU) No 1052/2013.
5. The results of the risk analysis shall be submitted, *in a timely and accurate manner*, to █ the Management Board.

6. Member States shall take results of the risk analysis into account when planning their operations and activities at the external borders as well as their activities with regard to return.
7. The Agency shall incorporate the results of a common integrated risk analysis model in its development of the common core curricula for the training of border guards and of staff involved in return-related tasks.

Article 11

Liaison officers in Member States

1. The Agency shall ensure regular monitoring of the management of the external borders *of all Member States* through liaison officers of the Agency **█** .

The Agency may decide that a liaison officer covers up to four Member States which are geographically close to each other.

2. The Executive Director shall appoint experts from the staff of the Agency to be deployed as liaison officers. The Executive Director shall, based on risk analysis and in consultation with the *concerned Member States*, *make a proposal on* the nature *and modalities* of the deployment, the Member State *or region* to which a liaison officer may be deployed *and possible tasks not covered by paragraph 3. The proposal from the Executive Director needs to be approved by the Management Board.* The Executive Director shall notify the Member State concerned of the appointment and shall determine, together with the Member State, the location of deployment.

3. The liaison officers shall act on behalf of the Agency and their role shall be to foster cooperation and dialogue between the Agency and the national authorities which are responsible for border management *and return*, including coast guards to the extent that they carry out border control tasks. The liaison officers shall, in particular:
- (a) act as an interface between the Agency and the national authorities responsible for border management, including coast guards to the extent that they carry out border control tasks;
 - (aa) *support the collection of information required by the Agency for the monitoring of irregular migration and risk analyses referred in Article 10;*
 - (b) support the collection of information *as referred to in Article 12 and* required by the Agency for carrying out the vulnerability assessment referred to in Article 12;

- (c) monitor the measures taken by the Member State at border sections to which a high impact level has been attributed in accordance with Regulation (EU) No 1052/2013;
- (ca) *contribute to promoting the application of the Union acquis relating to the management of external borders, including with regard to respect for fundamental rights;*
- (d) *where possible* assist the Member States in preparing their contingency plans *concerning border management;*
- (da) *facilitate the communication between the Member State and the Agency, share relevant information from the Agency with the Member State, including information about ongoing operations;*

- (e) report regularly to the Executive Director on the situation at the external border and the capacity of the Member State concerned to deal effectively with the situation at the external borders ***and on the execution of return operations towards relevant third countries. If the report raises concerns about one or more of these aspects relevant for the Member State concerned, the latter will be informed without delay by the Executive Director;***
- (f) monitor the measures taken by the Member State with regard to a situation requiring urgent action at the external borders as referred to in Article 18;

4. For the purposes of paragraph 3, the liaison officer shall, ***in compliance with the national and Union security and data protection rules:***

- (a) ***receive information from*** the national coordination centre and the national situational picture established in accordance with Regulation (EU) No 1052/2013;

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(c) keep regular contacts with national authorities which are responsible for border management, including coast guards to the extent that they carry out border control tasks, whilst informing *a point of contact designated by the Member State concerned*.

5. The report of the liaison officer shall form part of the vulnerability assessment *as* referred to in Article 12. *The report shall be transmitted to the Member State concerned.*

6. In carrying out their duties, the liaison officers shall take instructions only from the Agency.

- 1. *The Agency shall, by decision of the Management Board based on a proposal of the Executive Director, establish a common vulnerability assessment methodology, including objective criteria against which the Agency shall carry out the vulnerability assessment and the frequency and modalities for carrying out consecutive vulnerability assessments on Member States.*

1. *As a preventive measure on the basis of the risk analysis prepared in accordance with Article 10(3), the Agency shall monitor and assess at least once a year unless the Executive Director, based on risk assessments or a previous vulnerability assessment, decides otherwise, the availability of the technical equipment, systems, capabilities, resources, infrastructure, adequately skilled and trained staff of Member States necessary for border control.*

2. Member States shall, at the request of the Agency, provide information as regards technical equipment, staff and *to the extent possible* financial resources available at national level to carry out border control *and provide information on* their contingency plans *on border management*.
3. The aim of the vulnerability assessment is for the Agency to assess the capacity and readiness of Member States to face upcoming challenges, including present and future threats and pressures at the external borders, to identify, especially for those Member States facing specific and disproportionate pressures, possible immediate consequences at the external borders and subsequent consequences on the functioning of the Schengen area, and to assess their capacity to contribute to the rapid *reaction* pool referred to in Article 19(5). That assessment is without prejudice to the Schengen evaluation mechanism.

In this assessment, the capacity to carry out all border management tasks including the capacity to deal with the potential arrival of large numbers of persons shall be taken into account.

4. The results of the vulnerability assessment shall be submitted to the *Member States concerned. The Member State concerned may comment on the assessment.* The Executive Director *shall base* the measures to be *recommended to* the Member States *concerned* on the results of the vulnerability assessment, **■** taking into account the Agency's risk analysis, *the comments of the Member State concerned* and the results of the Schengen evaluation mechanism.
- 4a. *These measures should be aimed at eliminating the vulnerabilities identified in the assessment in order for Member States to increase their readiness to face upcoming challenges by enhancing or improving their capabilities, technical equipment, systems, resources and contingency plans.*
5. *When necessary* the Executive Director shall, *in consultation with the Member State concerned, make a recommendation* setting out the necessary **■** measures to be taken by the Member State concerned, including *the timelimit within such measures shall be implemented. The Executive Director shall invite the Member States concerned to take the necessary measures.*

6. Where a Member State does not *implement* the necessary **■** *measures of the recommendation* within the time-limit set, the Executive Director shall refer the matter to the Management Board and notify the Commission. The Management Board shall adopt a decision *on a proposal of the Executive Director* setting out the necessary **■** measures to be taken by the Member State concerned, including the time-limit within **■** such measures shall be *implemented. The decision of the Management Board shall be binding on the Member State.* If the Member State does not *implement* the measures within the time-limit foreseen in that decision, *the Management Board shall notify the Council and the Commission and* further action may be taken **■** in accordance with Article 18 *of this Regulation.*
- 6a. *The results of the vulnerability assessment shall be transmitted, in accordance with Article 49, on a regular basis and at least once a year to the European Parliament and the Council and the Commission.*

Section 3
External Border Management

Article 13
Actions by the Agency at the external borders

1. A Member *State* may request the Agency for assistance in implementing *its* obligations with regard to the control of the external borders. The Agency shall also carry out measures *in accordance with* Article 18.

2. The Agency shall organise the appropriate technical and operational assistance for the host Member State and it may, *acting in accordance with the relevant Union and international law, including the principle of non-refoulement*, take one or more of the following measures:
 - (a) coordinate joint operations for one or more Member States and deploy European Border and Coast Guard Teams;

 - (b) organise rapid border interventions and deploy European Border and Coast Guard Teams from the rapid *reaction* pool, and additional European Border and Coast Guards Teams as appropriate;

- (c) coordinate activities for one or more Member States and third countries at the external borders, including joint operations with neighbouring third countries;
- (d) deploy European Border and Coast Guard Teams in the framework of the migration management support teams at hotspot areas;
- (da) within the framework of operations mentioned in (a), (b) and (c) and in accordance with Regulation (EU) No 656/2014 and international law, provide technical and operational assistance to Member States and third countries, in the support of search and rescue operations for persons in distress at sea which may arise during border surveillance operations at sea;***

- (e) deploy its own experts as well as members of the teams who had been seconded by the Member States to the Agency to support the competent national authorities of the Member States involved for the appropriate duration;
 - (f) deploy technical equipment.
3. The Agency shall finance or co-finance the activities set out in paragraph 2 from its budget in accordance with the financial rules applicable to the Agency.
- 3a. *If the Agency has substantial additional financial needs due to a situation at the external borders, the Agency shall inform the European Parliament, the Council and the Commission thereof without delay.***

Article 14

Initiating joint operations and rapid border interventions at the external borders

1. *A Member State* may request the Agency to launch joint operations to face upcoming challenges, including *illegal immigration*, present or future threats at *its* external borders or cross-border crime, or to provide increased technical and operational assistance when implementing *its* obligations with regard to the control of the external borders.
2. At the request of a Member State faced with a situation of specific and disproportionate pressures, especially the arrival at points of the external borders of large numbers of third-country nationals trying to enter the territory of that Member State *unauthorised*, the Agency may deploy a rapid border intervention for a limited period of time on the territory of that host Member State.

3. The Executive Director shall evaluate, approve and coordinate proposals for joint operations made by Member States. Joint operations and rapid border interventions shall be preceded by a thorough, reliable and up-to-date risk analysis, thereby enabling the Agency to set an order of priority for the proposed joint operations and rapid border interventions, taking into account the impact level to external border sections in accordance with Regulation (EU) No 1052/2013 and the availability of resources.
4. The Executive Director shall, based on the results of the vulnerability assessment, and taking into account the Agency's risk analysis and the analysis layer of the European situational picture established in accordance with Regulation (EU) No 1052/2013, recommend to the Member State concerned to initiate and carry out joint operations or rapid border interventions. The Agency shall put its technical equipment at the disposal of the host or participating Member States.

5. The objectives of a joint operation or rapid border intervention may be achieved as part of a multipurpose operation which may involve *coast guard functions and prevention of cross border crime including* the fight against migrant smuggling or trafficking in human beings ■ and migration management including identification, registration, debriefing and return.

Article 15

Operational plan for joint operations

1. In preparation of a joint operation the Executive Director, in cooperation with the host Member State, shall draw up a list of technical equipment and staff needed taking into account the host Member State's available resources. On the basis of those elements, the Agency shall define a package of operational and technical reinforcement as well as capacity building activities to be included in the operational plan.
2. The Executive Director shall draw up an operational plan for joint operations at the external borders. The Executive Director and the host Member State, in consultation with the participating Member States, shall agree on the operational plan detailing the organisational *and procedural* aspects of the joint operation.

3. The operational plan shall be binding on the Agency, the host Member State and the participating Member States. It shall cover all aspects considered necessary for carrying out the joint operation, including the following:
- (a) a description of the situation, with *modus operandi* and objectives of the deployment, including the operational aim;
 - (b) the foreseeable duration of the joint operation;
 - (c) the geographical area where the joint operation will take place;
 - (d) a description of the tasks, ***responsibilities, including with regard to the respect for fundamental rights***, and special instructions for the European Border and Coast Guard Teams, including on permissible consultation of databases and permissible service weapons, ammunition and equipment in the host Member State;
 - (e) the composition of the European Border and Coast Guard Teams as well as the deployment of other relevant staff;

- (f) command and control provisions, including the names and ranks of the border guards of the host Member State responsible for cooperating with the members of the teams and the Agency, in particular the names and ranks of those border guards who are in command during the period of deployment, and the place of the members of the teams in the chain of command;
- (g) the technical equipment to be deployed during the joint operation, including specific requirements such as conditions for use, requested crew, transport and other logistics, and financial provisions;
- (h) detailed provisions on immediate incident reporting by the Agency to the Management Board and to relevant national public authorities;
- (i) a reporting and evaluation scheme containing benchmarks for the evaluation report, ***including with regard to the protection of fundamental rights***, and final date of submission of the final evaluation report;

- (j) regarding sea operations, specific information on the application of the relevant jurisdiction and legislation in the geographical area where the joint operation takes place, including references to *national*, international and Union law regarding interception, rescue at sea and disembarkation. In that regard the operational plan shall be established in accordance with Regulation (EU) No 656/2014 of the European Parliament and of the Council³³;
- (k) modalities of cooperation with third countries, other Union agencies, bodies and offices or international organisations;
- (l) procedures whereby persons in need of international protection, victims of trafficking in human beings, unaccompanied minors and persons in a vulnerable situation are directed to the competent national authorities for appropriate assistance;

³³ Regulation (EU) No 656/2014 of the European Parliament and of the Council of 15 May 2014 establishing rules for the surveillance of the external sea borders in the context of operational cooperation coordinated by the European Agency for the Management of Operational Cooperation at the External Borders of the Members States of the European Union (OJ L 189, 27.6.2014, p. 93).

- (m) procedures setting out a mechanism to receive and transmit to the Agency a complaint against ***all persons participating in a joint operation or rapid border intervention, including border guards or other relevant staff*** of the host Member State and members of the European Border and Coast Guard Teams alleging breaches of fundamental rights in the context of ***their participation in a joint operation or rapid border intervention***.
- (n) ***logistical arrangements including information on working conditions and the environment of the area where the joint operations are foreseen.***

4. Any amendments to or adaptations of the operational plan shall require the agreement of the Executive Director and the host Member State, after consultation of the participating Member States. A copy of the amended or adapted operational plan shall immediately be sent by the Agency to the participating Member States.

Article 16

Procedure for launching a rapid border intervention

1. A request by a Member State to launch a rapid border intervention shall include a description of the situation, possible aims and envisaged needs. If required, the Executive Director may immediately send experts from the Agency to assess the situation at the external borders of the Member State concerned.
2. The Executive Director shall immediately inform the Management Board of a Member State's request to launch a rapid border intervention.
3. When deciding on the request of a Member State, the Executive Director shall take into account the findings of the Agency's risk analyses and the analysis layer of the European situational picture established in accordance with Regulation (EU) No 1052/2013 as well as the outcome of the vulnerability assessment referred to in Article 12 and any other relevant information provided by the Member State concerned or another Member State.

4. The Executive Director shall take a decision on the request for launching a rapid border intervention within two working days from the date of the receipt of the request. The Executive Director shall simultaneously notify the Member State concerned and the Management Board in writing of the decision. The decision shall state the main reasons on which it is based.
5. If the Executive Director decides to launch a rapid border intervention, he or she shall deploy European Border and Coast Guard Teams from the rapid *reaction* pool in accordance with Article 19(5) *and the rapid reaction equipment pool in accordance with Article 38(3a)*, and where necessary, he or she shall decide on the immediate reinforcement by one or more European Border and Coast Guard Teams, in accordance with Article 19(6).
6. The Executive Director together with the host Member State shall draw up an operational plan as referred to in Article 15(3) immediately and in any event no later than three working days from the date of the decision.

7. As soon as the operational plan has been agreed upon *and provided to the Member States*, the Executive Director shall request *in writing* the Member States to immediately deploy the border guards *or other relevant staff* that form part of the rapid *reaction* pool. The Executive Director shall indicate the profiles and numbers of border guards *or other relevant staff*, required from each Member State from among those identified in the **█** rapid *reaction* pool.
 8. In parallel, and where necessary, to secure the immediate reinforcement of the European Border and Coast Guard Teams deployed from the rapid *reaction* pool, the Executive Director shall inform the Member States of the requested number and profiles of border guards *or other relevant staff* which are to be additionally deployed. This information shall be provided, in writing to the national contact points and shall indicate the date on which the deployment is to take place. A copy of the operational plan shall also be provided to them.
- █**

10. Member States shall ensure that the *number and profiles of the* border guards *or other relevant staff* assigned to the rapid *reaction* pool are immediately **■** made available to the Agency *to guarantee a complete deployment in accordance with Article 19(5) and (5b)*. Member States shall also make additional border guards *and other relevant staff available from the national pool in accordance with Article 19(6)*.
11. Deployment of the rapid *reaction* pool shall take place no later than *five* working days after the date on which the operational plan is agreed between the Executive Director and the host Member State. Additional deployment of European Border and Coast Guard Teams, shall take place where necessary, within *seven* working days of the deployment of the rapid *reaction* pool.
12. *In case the rapid reaction pool is deployed, the Executive Director shall, in consultation with the Management Board, immediately consider the priorities with regard to the Agency's ongoing and foreseen joint operations at other external borders in order to provide for possible reallocation of resources to the areas of external borders where a strengthened deployment is most needed.*

Article 17

Migration management support teams

1. Where a Member State faces disproportionate migratory pressures at particular hotspot areas of its external *borders* characterised by large influxes of mixed migratory flows, that Member State may request the operational and technical reinforcement by migration management support teams. That Member State shall submit a request for reinforcement and an assessment of its needs to the Agency and other relevant Union Agencies in particular *EASO* and Europol.
2. The Executive Director, in coordination with other relevant Union Agencies, shall assess the request for assistance of a Member State and the assessment of its needs for the purpose of defining a comprehensive reinforcement package consisting of various activities coordinated by the relevant Union Agencies to be agreed upon by the Member State concerned.

- 2a. *The Commission shall, in cooperation with the host Member State and the relevant agencies, establish the modalities of cooperation at the hotspot area and be responsible for the coordination of the activities of the migration management support teams.*
3. The operational and technical reinforcement provided by the European Border and Coast Guard Teams, the European Return Intervention Teams and experts from the Agency's staff in the framework of the migration management support teams, may include:
- (a) *providing assistance in* the screening of third-country nationals arriving at the external borders, including the identification, registration, and debriefing of those third-country nationals and, where requested by the Member State, the fingerprinting of third-country nationals *in full respect for fundamental rights and providing information regarding the purpose of these procedures;*

(b) *the referral of and provision of initial information to persons who wish to apply for international protection the competent national authorities of the Member State concerned or EASO;*

(c) technical and operational assistance in the field of return, including the preparation and organisation of return operations.

3a. *Migration management support teams shall, where necessary, include staff with expertise in child protection, trafficking in human beings, protection against gender-based persecution and/or fundamental rights.*

█

Situation at the external borders requiring urgent action

1. Where a Member State does not take the necessary ■ measures in accordance with a decision of the Management Board referred to in *Article 12(6)* or in the event of *specific and* disproportionate ■ pressure at the external border, *where a Member State has not requested the Agency for sufficient support by means of actions as mentioned in Articles 14, 16 or 17 or is not taking the necessary actions for the implementation of those measures, thus* rendering the control of the external borders ineffective to such an extent that it risks putting in jeopardy the functioning of the Schengen area, *the Council, on the basis of a proposal from* the Commission, ■ may adopt *without delay* a decision by means of an implementing act, identifying the measures *that should mitigate those risks* to be implemented by the Agency and requiring the Member State concerned to cooperate with the Agency in the implementation of those measures. *The Commission shall consult the Agency before making its proposal.*
- 1a. If a situation requiring urgent action arises, the European Parliament shall be informed of that situation without delay and shall be informed of all subsequent measures and decisions taken in response.*

2. *In order to mitigate the risk of putting in jeopardy the Schengen area* the *decision* shall provide for one or more of the following measures to be taken by the Agency:
- (a) organise and coordinate rapid border interventions and deploy European Border and Coast Guard Teams from the rapid *reaction* pool, and additional European Border and Coast Guards Teams as appropriate;
 - (b) deploy European Border and Coast Guard Teams in the framework of the migration management support teams at hotspot areas;
 - (c) coordinate activities for one or more Member States and third countries at the external borders, including joint operations with neighbouring third countries;
 - (d) deploy technical equipment;
 - (e) organise return interventions.

3. The Executive Director shall, within two working days from the date of adoption of the **Council** decision ■ :
- (a) *determine the actions needed to be taken for the practical execution of the measures identified in the Council decision, including the technical equipment as well as the number and profiles of the border guards and other relevant staff needed to meet the objectives of that decision;*
 - (b) *draw up an operational plan and provide it to the Member States concerned.*
4. ■ The Executive Director and the Member State concerned shall *agree on the operational plan* within *three* working days from the date of its submission.
5. The Agency shall, without delay and in any case within *five* working days from establishment of the operational plan, deploy the necessary ■ staff from the rapid *reaction* pool referred to in Article 19(5) for the practical execution of the measures set out in the **Council** decision. Additional ■ European Border and Coast Guard Teams shall be deployed as necessary at a second stage and in any case within *seven* working days from the deployment of the rapid *reaction* pool.

5a. *The Agency shall, without delay and in any case within the number of working days mentioned in Article 38(3a) from the establishment of the operational plan, deploy the necessary technical equipment for the practical execution of the measures set out in the Council decision.*

Additional technical equipment shall be deployed as necessary at a second stage in accordance with the relevant provisions of Article 38.

6. The Member State concerned shall comply with the **Council** decision and for that purpose it shall immediately cooperate with the Agency and take the necessary action to facilitate the implementation of that decision and the practical execution of the measures set out in that decision and in the operational plan agreed upon with the Executive Director.
7. The Member States shall make available the border guards and other relevant staff or staff *involved in return-related tasks*, determined by the Executive Director in accordance with paragraph 2 *of this Article*. The Member States may not invoke the ■ situation referred to in Article 19(3) and (6).

8. *If the Member State concerned does not comply within 30 days with the Council decision and does not cooperate with the Agency as provided for under paragraph 6, the Commission may trigger the application of the procedure provided for in Article 29 of Regulation (EU) 2016/399.*

Article 19

Composition and deployment of European Border and Coast Guard Teams

1. The Agency shall deploy border guards and other relevant staff as members of the European Border and Coast Guard Teams to joint operations, rapid border interventions and in the framework of the migration management support teams. The Agency may also deploy experts from its own staff.
2. On a proposal by the Executive Director, the Management Board shall decide by an absolute majority of its members with a right to vote on the profiles and the overall number of border guards *and other relevant staff* to be made available for the European Border and Coast Guard Teams. The same procedure shall apply with regard to any subsequent changes in the profiles and the overall numbers. Member States shall contribute to the European Border and Coast Guard Teams through a national pool on the basis of the various defined profiles by nominating border guards *and other relevant staff* corresponding to the required profiles.

3. The contribution by Member States as regards their border guards to specific joint operations for the following year shall be planned on the basis of annual bilateral negotiations and agreements between the Agency and Member States. In accordance with those agreements, Member States shall make the border guards available for deployment at the request of the Agency, unless they are faced with an exceptional situation substantially affecting the discharge of national tasks. Such a request shall be made at least 21 working days before the intended deployment. ***If a Member State invokes such an exceptional situation, it shall provide in writing comprehensive reasons and information on the situation to the Agency, the content of which shall be included in the report referred to in paragraph 9.***

4. As regards rapid border interventions, on a proposal by the Executive Director of the Agency, the Management Board shall decide by a three-quarter majority on the profiles and the minimum number of border guards *or other relevant staff that correspond to those profiles* to be made available for a rapid *reaction* pool of European Border and Coast Guard Teams. The same procedure shall apply with regard to any subsequent changes in the profiles and the overall number of border guards *or other relevant staff* of the rapid *reaction* pool. Member States shall contribute to the rapid *reaction* pool via a national expert pool on the basis of the various defined profiles by nominating border guards *or other relevant staff* corresponding to the required profiles.
5. The rapid *reaction* pool shall be a standing corps placed at the immediate disposal of the Agency and which can be deployed from each Member State within *five* working days from when the operational plan is agreed upon by the Executive Director and the host Member State. For that purpose, each Member State shall, on a yearly basis, make available to the Agency a number of border guards *or other relevant staff* which shall amount to a minimum of 1 500 border guards or other relevant staff, corresponding to the profiles identified by the decision of the Management Board. *The Agency may verify whether the border guards proposed by Member States correspond to the defined profiles. The Agency may request the Member State to remove a border guard from the pool in the case of misconduct or infringement of the applicable rules.*

- 5a.** *Each Member State shall be responsible for the contribution to the number of border guards or other relevant staff established in paragraph 5, according to Annex I, in accordance with the relevant profiles referred to in paragraph 5.*
- 5b.** *Member States shall make the border guards and/or other relevant staff from the rapid reaction pool available for deployment at the request of the Agency. If a risk analysis and if available, a vulnerability assessment, show that a Member State is faced with a situation that would substantially affect the discharge of national tasks, the contribution for the deployment of the rapid border intervention of the Member State concerned shall be half of the fixed contribution of Member States in Annex I. A host Member State where a rapid border intervention is taking place shall not deploy from its fixed contribution to the rapid reaction pool. If a shortage arises for the deployment of the rapid border intervention, the Management Board, based on a proposal of the Executive Director, shall decide how that shortage is to be filled.*

6. Where necessary, the deployment of European Border and Coast Guard Teams from the rapid **reaction** pool shall be immediately complemented by additional European Border and Coast Guard Teams. For that purpose, Member States shall, at the request of the Agency, immediately communicate the number, names and profiles of border guards **and other relevant staff** from their national pool which they are able to make available within **seven** working days from the start of the rapid border intervention. Member States shall make the border guards **and other relevant staff** available for deployment at the request of the Agency unless they are faced with an exceptional situation substantially affecting the discharge of national tasks. ***If a Member State invokes such an exceptional situation, it shall provide in writing comprehensive reasons and information on the situation to the Agency, the content of which shall be included in the report referred to in paragraph 9.***
- 6a. ***If a situation arises in which more border guards are required than provided for under paragraphs 5 and 6, the Executive Director shall immediately inform the European Parliament, the Council and the Commission and call upon the Council to seek commitments from Member States to meet the shortage.***

7. Member States shall ensure that the border guards and other relevant staff which they contribute match the profiles and the numbers decided upon by the Management Board. The duration of the deployment shall be determined by the home Member State but in any case it shall not be less than 30 days *except if the operation has a shorter duration than 30 days*.
8. The Agency shall contribute to the European Border and Coast Guard Teams with competent border guards *or other relevant staff* seconded by the Member States as national experts to the Agency. The contribution by Member States as regards the secondment of their border guards *or other relevant staff* to the Agency for the following year shall be planned on the basis of annual bilateral negotiations and agreements between the Agency and Member States. In accordance with those agreements, Member States shall make the border guards *or other relevant staff* available for secondment, unless that would seriously affect the discharge of national tasks. In such situations Member States may recall their seconded border guards *or other relevant staff*.

Such secondments may be for 12 months or more but in any case it shall not be less than three months. The seconded border guards **and other relevant staff** shall be considered as members of the teams and they shall have the tasks and powers of the members of the teams. The Member State having seconded the border guards **or other relevant staff** shall be considered as the home Member State.

Other staff employed by the Agency on a temporary basis who are not qualified to perform border control functions shall only be deployed during joint operations for coordination **and other tasks which do not require full border-guard training** and shall not form part of the European Border and Coast Guard Teams.

9. The Agency shall inform the European Parliament on an annual basis of the number of border guards that each Member State has committed **and the number of border guards actually deployed** to the European Border and Coast Guard Teams in accordance with this Article. ***This report shall list the Member States that invoked the exceptional situation referred to in paragraphs 3 and 6 in the previous year and include the reasons and information provided by the Member State concerned.***

Article 20

Instructions to the European Border and Coast Guard Teams

1. During deployment of European Border and Coast Guard Teams, the host Member State shall issue instructions to the teams in accordance with the operational plan.
2. The Agency, through its Coordinating Officer, may communicate its views to the host Member State on the instructions given to European Border and Coast Guard Teams. In that case, the host Member State shall take those views into consideration and follow them to the extent possible.
3. In cases where the instructions issued to the European Border and Coast Guard Teams are not in compliance with the operational plan, the Coordinating Officer shall immediately report to the Executive Director, who may, where appropriate, take action in accordance with Article 24(2).

4. Members of the teams shall, in the performance of their tasks and in the exercise of their powers, fully respect fundamental rights, including access to asylum procedures, and human dignity. Any measures taken in the performance of their tasks and in the exercise of their powers shall be proportionate to the objectives pursued by such measures. While performing their tasks and exercising their powers, they shall not discriminate against persons on grounds of sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation.

5. Members of the teams shall remain subject to the disciplinary measures of their home Member State. The home Member State shall provide for appropriate disciplinary or other measures in accordance with its national law in case of violations of fundamental rights or international protection obligations in the course of a joint operation or rapid border intervention.

Article 21
Coordinating officer

1. The Agency shall ensure the operational implementation of all the organisational aspects, including the presence of staff members of the Agency during the joint operations, pilot projects or rapid border interventions.
2. The Executive Director shall appoint one or more experts from the staff of the Agency to be deployed as coordinating officer for each joint operation or rapid border intervention. The Executive Director shall notify the host Member State of the appointment.
3. The coordinating officer shall act on behalf of the Agency in all aspects of the deployment of the European Border and Coast Guard Teams. The role of the coordinating officers shall be to foster cooperation and coordination amongst host and participating Member States. In particular, the coordinating officer shall:

- (a) act as an interface between the Agency, *the host Member State* and the members of the European Border and Coast Guard Teams, providing assistance, on behalf of the Agency, on all issues relating to the conditions for their deployment with the teams;
- (b) monitor the correct implementation of the operational plan, *including on the protection of fundamental rights and report to the Agency thereon*;
- (c) act on behalf of the Agency in all aspects of the deployment of the European Border and Coast Guard Teams and report to the Agency on all those aspects;

■

- (e) report to the Executive Director where the instructions issued to the European Border and Coast Guard Teams by the host Member States are not in compliance with the operational plan.

4. In the context of joint operations or rapid border interventions, the Executive Director may authorise the coordinating officer to assist in resolving any disagreement on the execution of the operational plan and deployment of the teams.

Article 22

National contact point

Member States shall appoint a national contact point for communication with the Agency on all matters pertaining to the activities of the Agency. The national contact point shall be reachable at all times.

Article 23

Costs

1. The Agency shall fully meet the following costs incurred by Member States in making available their border guards ***and other relevant staff*** for the purposes of deploying European Border and Coast Guard Teams, including the rapid ***reaction*** pool:
 - (a) travel costs from the home Member State to the host Member State and from the host Member State to the home Member State;

- (b) costs related to vaccinations;
- (c) costs related to special insurance needs;
- (d) costs related to health care;
- (e) daily subsistence allowances, including accommodation costs;
- (f) costs related to the Agency's technical equipment.

2. Detailed rules concerning the payment of the daily subsistence allowance of members of the European Border and Coast Guard Teams shall be established and updated as necessary by the Management Board.

Suspension or termination of *activities*

1. The Executive Director shall terminate, after informing the Member State concerned, *activities of the Agency* if the conditions to conduct those activities are no longer fulfilled.
 - 1a. *The Member States participating in a joint operation, rapid border intervention or migration management support team may request the Executive Director to terminate that joint operation, or rapid border intervention or migration management support.*
2. The Executive Director may, *after informing the Member State concerned*, withdraw the financing of *an activity* or suspend or terminate it if the operational plan is not respected by the host Member State.
3. The Executive Director shall, *after consulting the Fundamental Rights Officer and informing the Member State concerned*, withdraw the financing of a joint operation, or a rapid border intervention, *a pilot project, migration management support team, return operation, return intervention or working arrangement* or suspend or terminate, in whole or in part *such activities*, if he or she considers that there are violations of fundamental rights or international protection obligations that are of a serious nature or are likely to persist. *The Executive Director shall inform the Management Board of such a decision.*

4. *If the Executive Director decides to suspend or terminate the deployment by the Agency of a migration management support team, he or she shall inform the other relevant Agencies participating in the function of that hotspot of that decision.*

Article 25

Evaluation of *activities*

The Executive Director shall evaluate the results of the joint operations and rapid border interventions, *pilot projects, migration management support teams and operational cooperation with third countries* and transmit the detailed evaluation reports within 60 days following the end of those *activities* to the Management Board, together with the observations of the Fundamental Rights Officer. The *Executive Director* shall make a comprehensive comparative analysis of those results with a view to enhancing the quality, coherence and effectiveness of future *activities*, and shall include it in his or her ■ annual activity report.

Section 4

Return

Article 26

Return

1. ***With regard to return, the Agency shall***, in accordance with the respect of fundamental rights and general principles of Union law as well as international law, including refugee protection and ***fundamental*** rights, ***including children's rights***, in particular:
 - (a) coordinate at technical and operational level return-***related*** activities of the Member States, ***including voluntary departure***, to achieve an integrated system of return management among competent authorities of the Member States, with the participation of relevant authorities of third countries and other relevant stakeholders;
 - (b) provide ***technical and*** operational ***assistance*** to Member States subject to particular pressure on their return systems;
 - (c) coordinate the use of relevant IT systems and provide support ***to the Member States*** on consular cooperation for the identification of third-country nationals and the acquisition of travel documents, ***without disclosing information relating to the fact that an application for international protection has been made***, organise and coordinate return operations and provide support to voluntary departure ***in cooperation with the Member States***;

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- (e) organise, promote and coordinate activities enabling the exchange of information and the identification and pooling of best practices in return matters between the Member States;
 - (f) finance or co-finance the operations, interventions and activities referred to in this Chapter ■ from its budget, in accordance with the financial rules applicable to the Agency.

2. The *technical and* operational *assistance* referred to in point (b) of paragraph 1 shall include *activities* to help Member States carry out return procedures by the competent national authorities by providing, in particular:

- (a) interpreting services;
- (b) *practical* information on third countries of return *relevant for the implementation of this Regulation, in cooperation, where appropriate, with other Union bodies, offices and agencies including EASO*;

- (c) advice on the **implementation** and management of return procedures in compliance with Directive 2008/115/EC;
 - (d) **advice and** assistance on measures necessary to ensure the availability of returnees for return purposes and avoid that returnees abscond, **in accordance with Directive 2008/115/EC and international law**.
3. The **Agency** shall aim at building synergies and connecting Union-funded networks and programmes in the field of return in close cooperation with the European Commission and **with the support of relevant stakeholders, including** the European Migration Network.
4. The Agency may make use of the financial means of the Union which are available in the field of return. The Agency shall ensure that in its grant agreements with Member States any financial support is conditional upon the full respect for the Charter ■ .

1. ***Without entering into the merits of return decisions and*** in accordance with Directive 2008/115/EC, █ the Agency shall provide the necessary assistance and, at the request of one or several participating Member States, ensure the coordination or the organisation of return operations, including through the chartering of aircraft for the purpose of such operations. The Agency may, on its own initiative, propose to Member States to coordinate or organise return operations.

2. Member States shall █ on a monthly basis inform the Agency of their ***indicative planning of the number of returnees and the third countries of return of relevant*** national return operations, as well as of their needs for assistance or coordination by the Agency. The Agency shall draw up a rolling operational plan to provide the requesting Member States with the necessary operational reinforcement, including technical equipment. The Agency may, on its own initiative ***or at the request of a Member State***, include in the rolling operational plan the dates and destinations of return operations it considers necessary, based on a needs assessment. The Management Board shall decide, on a proposal of the Executive Director, on the *modus operandi* of the rolling operational plan.

3. The Agency may provide the necessary assistance and ensure, at the request of the participating Member States, or propose on its own initiative, the coordination or the organisation of return operations, for which the means of transport and forced return escorts are made available by a third country of return ('collecting return operations'). The participating Member States and the Agency shall ensure that the respect of fundamental rights, *the principle of non-refoulement*, and the proportionate use of means of constraints are guaranteed during the entire *return* operation. At least a Member State representative and a forced return monitor from the pool established under Article 28 *or from the national monitoring system of the participating Member State* shall be present throughout the entire return operation until arrival at the third country of return.

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- 4a. *The Executive Director shall draw up a return plan without delay for operations defined in paragraph 3. The Executive Director and the participating Member State(s) shall agree on the return plan detailing the organisational and procedural aspect of the return operation, taking account of the fundamental rights implications and risks of such operations. Any amendment to or adaptation of this plan shall require the agreement of the aforementioned parties.*

- 4b. *The operational plan of operations defined in paragraph 3 shall be binding on the Agency and the participating Member State(s). It shall cover all aspects that are necessary for carrying out the return operation.*
5. Every return operation shall be monitored in accordance with Article 8(6) of Directive 2008/115/EC. The monitoring of *forced* return operations shall be carried out *by the forced return monitor* on the basis of objective and transparent criteria and shall cover the whole return operation from the pre-departure phase until the hand-over of the returnees in the third country of return. *The forced return monitor shall submit a report on an operation to the Executive Director, the Fundamental Rights Officer and to the competent national authorities of all the Member States involved in that operation. If necessary, appropriate follow-up shall be ensured by the Executive Director and competent national authorities respectively.*

6. The Agency shall finance or co-finance return operations ■ from its budget, in accordance with the financial rules applicable to the Agency, giving priority to those conducted by more than one Member State, or from hotspot areas.
- 6a. In case it has concerns regarding the respect of fundamental rights of a return operation, the Agency shall communicate its concerns to the participating Member States and the Commission.*
- 7a. The Executive Director shall evaluate the results of the return operations and transmit every six months a detailed evaluation report covering all return operations conducted in the previous semester to the Management Board, together with the observations of the Fundamental Rights Officer. The Executive Director shall make a comprehensive comparative analysis of those results with a view to enhancing the quality, coherence and effectiveness of future return operations, and it shall include it in its annual activity report.*

Article 28

Pool of Forced Return Monitors

1. The Agency shall *after consulting the Fundamental Rights Officer*, constitute a pool of forced return monitors from ■ competent bodies who carry out forced return monitoring activities in accordance with Article 8(6) of Directive 2008/115/EC and who have been trained in accordance with Article 35.
2. The *Management Board, on a proposal of the* Executive Director shall determine the profile and the number of the forced return monitors to be made available to that pool. The same procedure shall apply with regard to any subsequent changes in the profile and *overall numbers*. Member States shall *be responsible for contributing* to the pool by nominating the forced return monitors corresponding to the defined profile. *Forced return monitors with specific expertise in child protection shall be included in the pool.*

- 2a. *The contribution of Member States as regards their forced return monitors to return operations and interventions for the following year shall be planned on the basis of annual bilateral negotiations and agreements between the Agency and Member States. In accordance with those agreements, Member States shall make the forced return monitors available for deployment at the request of the Agency, unless they are faced with an exceptional situation substantially affecting the discharge of national tasks. Such a request shall be made at least 21 working days before the intended deployment, or five working days in case of a Rapid Return Intervention.*
3. The Agency shall make available the forced return monitors, upon request, to participating Member States to monitor, on their behalf, the correct implementation *throughout* the return operation and return interventions. *It shall make available forced return monitors with specific expertise in child protection for any return operation involving children.*
- 3a. *Forced return monitors shall remain subject to the disciplinary measures of their home Member State in the course of a return operation or return intervention.*

Article 29

Pool of Forced Return Escorts

1. The Agency shall constitute a pool of forced return escorts from national competent bodies who carry out return operations in accordance with the requirements referred to in Article 8(4) and (5) of Directive 2008/115/EC and who have been trained in accordance with Article 35.
2. The **Management Board on a proposal of the** Executive Director shall determine the profile and the number of the forced return escorts to be made available to that pool. The same procedure shall apply with regard to any subsequent changes in the profile and **overall** number. Member States shall contribute to the pool by nominating the forced return escorts corresponding to the defined profile. ***Forced return escorts with specific expertise in child protection shall be included in the pool.***

- 2a. *The contribution of Member States as regards their forced return escorts to return operations and interventions or the following year shall be planned on the basis of annual bilateral negotiations and agreements between the Agency and Member States. In accordance with those agreements, Member States shall make the forced return escorts available for deployment at the request of the Agency, unless they are faced with an exceptional situation substantially affecting the discharge of national tasks. Such a request shall be made at least 21 working days before the intended deployment, or five working days in case of a Rapid Return Intervention.*
3. The Agency shall make available these escorts, upon request, to participating Member States to escort returnees on their behalf and to take part in return *operations and interventions. It shall make available forced return escorts with specific expertise in child protection for any return operation involving children.*
- 3a. *Forced return escorts shall remain subject to the disciplinary measures of their home Member State in the course of a return operation or return intervention.*

Article 30

Pool of Return Specialists

1. The Agency shall constitute a pool of return specialists from national competent bodies and from the staff of the Agency, who have the skills and expertise required for carrying out return-related activities and who have been trained in accordance with Article 35. Those specialists shall be made available to carry out specific tasks, such as identification of particular groups of third-country nationals, the acquisition of travel documents from third countries and facilitation of consular cooperation.
2. The **Management Board, on a proposal of the** Executive Director shall determine the profile and the number of the ■ return *specialists* to be made available to that pool. The same procedure shall apply with regard to any subsequent changes in the profile and **overall numbers**. Member States shall contribute to the pool by nominating the specialists corresponding to the defined profile. ***Return specialists with specific expertise in child protection shall be included in the pool.***

- 2a. *The contribution of Member States as regards their return specialists to return operations and interventions for the following year shall be planned on the basis of annual bilateral negotiations and agreements between the Agency and Member States. In accordance with those agreements, Member States shall make the return specialists available for deployment at the request of the Agency, unless they are faced with an exceptional situation substantially affecting the discharge of national tasks. Such a request shall be made at least 21 working days before the intended deployment, or five working days in case of a Rapid Return Intervention.*
3. The Agency shall make available the *return* specialists, upon request, to Member States participating in return operations and to take part in return interventions. *It shall make available return specialists with specific expertise in child protection for any return operation involving children.*
- 3a. *Return specialists shall remain subject to the disciplinary measures either of the Agency or of their home Member State in the course of a return operation or return intervention.*

Article 31

European Return Intervention Teams

1. The Agency shall constitute, from the pools set out in Articles 28, 29 and 30, tailor-made European Return Intervention Teams for deployment during return interventions.
2. Articles 20, 21 and 23 shall apply *mutatis mutandis* to the European Return Intervention Teams.

Article 32

Return Interventions

1. In circumstances where *a Member State is* facing a **■** burden when implementing the obligation to return *third-country nationals who are the subject of return decisions issued by a Member State*, the Agency shall, upon request of *that Member State*, provide the appropriate technical and operational assistance in the form of a return intervention. Such intervention may consist *of* the deployment of European Return Intervention Teams to the host *Member State* and the organisation of return operations from the host *Member State*.
■

2. In circumstances where *a Member State is* facing specific and disproportionate pressure when implementing *its* obligation to return *third-country nationals who are the subject of return decisions issued by a Member State*, the Agency shall, upon the request of *that* Member States, provide the appropriate technical and operational assistance in the form of a rapid return intervention. The Agency may propose on its own initiative to provide to *that Member State* such technical and operational assistance. A rapid return intervention may consist in the rapid deployment of European Return Intervention Teams to the host *Member State* and the organisation of return operations from the host *Member State*.
3. The Executive Director shall draw up an operational plan without delay, in agreement with the host *Member State* and the *participating* Member States *on the* return intervention. *The relevant provisions of Article 15 shall apply.*

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5. The Executive Director shall take a decision on the operational plan as soon as possible and, in the case referred to in paragraph 2, within five working days. The decision shall be immediately notified in writing to the Member States concerned and to the Management Board.
6. The Agency shall finance or co-finance return interventions ■ from its budget in accordance with the financial rules applicable to the Agency.

Chapter III
General provisions

Section 1
General rules

Article 33

Protection of Fundamental Rights and a Fundamental Rights Strategy

1. The European Border and Coast Guard shall guarantee the protection of fundamental rights in the performance of its tasks under this Regulation in accordance with relevant Union law, in particular the Charter, **■** relevant international law, including the **1951** Convention Relating to the Status of Refugees, **the 1967 Protocol thereto** and obligations related to access to international protection, in particular the principle of *non-refoulement*.

For that purpose, the Agency shall draw up and further develop and implement a Fundamental Rights Strategy including an effective mechanism to monitor the respect for fundamental rights in all the activities of the Agency.

2. In the performance of its tasks the European Border and Coast Guard shall ensure that no person is disembarked in, forced to enter, conducted to or otherwise handed over or returned to the authorities of a country in contravention of the principle of *non-refoulement*, or from which there is a risk of expulsion or return to another country in contravention of that principle.
3. The European Border and Coast Guard shall, in the performance of its tasks, take into account the special needs of children, ***unaccompanied minors, persons with disabilities***, victims of trafficking in human beings, persons in need of medical assistance, persons in need of international protection, persons in distress at sea and other persons in a particularly vulnerable situation.

The European Border and Coast Guard shall in all its activities pay particular attention to children's rights and ensure that the best interests of the child are respected.

4. In the performance of its tasks, in its relations with Member States and in its cooperation with third countries, the Agency shall take into account the reports of the Consultative Forum and the Fundamental Rights Officer.

Article 34

Codes of Conduct

1. The Agency shall draw up and further develop a Code of Conduct applicable to all border control operations coordinated by the Agency. The Code of Conduct shall lay down procedures intended to guarantee the principles of the rule of law and respect for fundamental rights with particular focus on ***vulnerable persons, including children***, unaccompanied minors and ***other*** persons in a vulnerable situation, as well as on persons seeking international protection, applicable to all persons participating in the activities of the Agency.

2. The Agency shall develop and regularly update a Code of Conduct for the return of *third country nationals who are the subject of return decisions issued by a Member State*, which shall apply during all return operations and return interventions coordinated or organised by the Agency. That Code of Conduct shall describe common standardised procedures to simplify the organisation of return operations and return interventions, and assure return in a humane manner and with full respect for fundamental rights, in particular the principles of human dignity, prohibition of torture and of inhuman or degrading treatment or punishment, the right to liberty and security and the right to the protection of personal data and non-discrimination.
3. The Code of Conduct for return shall in particular pay attention to the obligation of Member States to provide for an effective forced-return monitoring system as set out in Article 8(6) of Directive 2008/115/EC and to the Fundamental Rights Strategy.
4. The Agency shall develop and regularly update its Codes of Conduct in cooperation with the Consultative Forum.

Article 35

Training

1. The Agency shall, in cooperation with the appropriate training entities of the Member States, *and, where appropriate, EASO and the European Union Agency for Fundamental Rights*, develop specific training tools, *including specific training in the protection of children and other persons in a vulnerable situation*, and provide border guards and other relevant staff who are members of the European Border and Coast Guard Teams with advanced training relevant to their tasks and powers. Experts from the staff of the Agency shall conduct regular exercises with those border guards in accordance with the advanced training and exercise schedule referred to in the annual work programme of the Agency.
2. The Agency shall take the necessary initiatives to ensure that all border guards and other relevant staff of the Member States who participate in the European Border and Coast Guard Teams, as well as the staff of the Agency, have received, prior to their participation in operational activities organised by the Agency, training in relevant Union and international law, including on fundamental rights, access to international protection and *where appropriate* search and rescue.

- 2a. *The Agency shall finance 100 % of training for border guards to be included in the rapid reaction pool referred to in Article 19(5), for the purposes of their participation in this pool.*
3. The Agency shall take the necessary initiatives to ensure training for staff involved in return-related tasks to be part of the pools referred to in Articles 28, 29 and 30. The Agency shall ensure that all staff who participate in return operations and in return interventions, as well as the staff of the Agency, have received, prior to their participation in operational activities organised by the Agency, training in relevant Union and international law, including fundamental rights and access to international protection.

4. The Agency shall establish and further develop common core curricula for the training of border guards and provide training at European level for instructors of the national border guards of Member States, including with regard to fundamental rights, access to international protection and relevant maritime law. ***The core curricula shall aim to promote the highest standards and best practices in the implementation of Union border management legislation.*** The Agency shall draw up the common core curricula after consulting the Consultative Forum ***and the Fundamental Rights Officer.*** Member States shall integrate the common core curricula in the training of their national border guards and staff involved in return-related tasks.

5. The Agency shall also offer additional training courses and seminars on subjects related to the control of the external borders and return of third-country nationals for officers of the competent national services of Member States ***and where appropriate of third countries.***

6. The Agency may organise training activities in cooperation with Member States and third countries on their territory.
7. The Agency shall establish an exchange programme enabling border guards participating in the European Border and Coast Guard Teams and staff participating in the European Return Intervention Teams to acquire knowledge or specific know-how from experiences and good practices abroad by working with border guards and staff involved in return-related tasks in a Member State other than their own.

Article 36

Research and innovation

1. The Agency shall proactively monitor and contribute to research and innovation activities relevant for *European integrated border management* including the use of advanced surveillance technology **■**. The Agency shall disseminate the results of that research to the *European Parliament, to the Member States and to the Commission in accordance with Article 49*. It may use those results as appropriate in joint operations, rapid border interventions, return operations and return interventions.
2. The Agency shall assist the Member States and the Commission in identifying key research themes. The Agency shall assist *Member States and* the Commission in the definition and accomplishment of the relevant Union framework programmes for research and innovation activities.

3. The Agency shall **■** implement the parts of the Framework Programme for Research and Innovation which relate to border security. For that purpose, the Agency shall have the following tasks:
- (a) managing some stages of programme implementation and some phases in the lifetime of specific projects on the basis of the relevant work programmes adopted by the Commission, where the Commission has empowered the Agency to do so in the instrument of delegation;
 - (b) adopting the instruments of budget execution for revenue and expenditure and carrying out all the operations necessary for the management of the programme, where the Commission has empowered the Agency to do so in the instrument of delegation;
 - (c) providing support in programme implementation where the Commission has empowered the Agency to do so in the instrument of delegation.
4. The Agency may plan and implement pilot projects regarding matters covered by this Regulation.

Article 37

Acquisition of technical equipment

1. The Agency may acquire, itself or in co-ownership with a Member State, or lease technical equipment to be deployed during joint operations, pilot projects, rapid border interventions, return operations, return interventions, *migration management support teams* or technical assistance projects in accordance with the financial rules applicable to the Agency.
2. The Agency may acquire technical equipment **■** by decision of the Executive Director in consultation with the Management Board. Any acquisition or leasing of equipment entailing significant costs to the Agency shall be preceded by a thorough needs and cost/benefit analysis. Any such expenditure shall be provided for in the Agency's budget as adopted by the Management Board.

3. Where the Agency acquires or leases major technical equipment, the following conditions shall apply:
- (a) in case of acquisition by the Agency or co-ownership, the Agency shall agree with one Member State that that Member State shall provide for the registration of the equipment in accordance with the applicable legislation of that Member State;
 - (b) in case of leasing, the equipment shall be registered in a Member State.
4. On the basis of a model agreement drawn up by the Agency *and approved by the Management Board*, the Member State of registration and the Agency shall agree on modalities ensuring *the interoperability of the equipment and* the periods of full availability of the co-owned assets for the Agency, as well as on the terms of use of the equipment, *including specific provisions on rapid deployment during rapid border intervention operations*. Technical equipment owned solely by the Agency shall be made available to the Agency upon its request and the Member State of registration may not invoke the exceptional situation referred to in Article 38(4).

5. The Member State of registration or the supplier of technical equipment shall provide the necessary experts and technical crew to operate the technical equipment in a legally sound and safe manner.

Article 38

Technical equipment pool

1. The Agency shall set up and keep centralised records of equipment in a technical equipment pool composed of equipment owned either by the Member States or by the Agency and equipment co-owned by the Member States and the Agency for *its operational activities*.
 - 1a. *Equipment solely owned by the Agency shall be fully available for deployment at any time as referred to in Article 37(4).*
 - 1b. *Equipment co-owned by the Agency at a share of more than 50% shall also be available for deployment in accordance with the agreement between Member States and the Agency as referred to in 37(4).*

1c. The Agency shall ensure the compatibility and interoperability of the equipment listed in the technical equipment pool.

To that end it shall define technical standards to be met by equipment to be acquired, totally or partially, by the Agency and of the equipment owned by Member States which is listed in the technical equipment pool, where such technical standards are necessary for the participation in activities of the Agency.

2. The Executive Director shall identify the minimum number of technical equipment in accordance with the needs of the Agency, notably in order to be able to carry out joint operations, **migration management support teams**, rapid border interventions, **return operations and return interventions**, in accordance with the its work programme for the year in question.

If the minimum number of technical equipment proves to be insufficient to carry out the operational plan agreed for joint operations or rapid border interventions, the Agency shall revise it on the basis of justified needs and of an agreement with the Member States.

3. The technical equipment pool shall contain the minimum number of equipment identified as needed by the Agency per type of technical equipment. The equipment listed in the technical equipment pool shall be deployed during joint operations, **migration management support teams** pilot projects, rapid border interventions, return operations or return interventions.

3a. *The equipment pool shall contain a rapid reaction equipment pool with a limited number of equipment needed for possible rapid border interventions. The contributions of Member States to this pool shall be planned in accordance with annual bilateral negotiations and agreements referred in paragraph 4. For the equipment on this list, Member States may not invoke the exceptional situation referred to in paragraph 4.*

The equipment on this list shall be sent to the destination for deployment as soon as possible but not later than 10 days after the date on which the operational plan is agreed.

The Agency shall contribute to this pool with equipment at the Agency's disposal as referred to in Article 37(1).

4. Member States shall contribute to the technical equipment pool. The contribution by Member States to the pool and deployment of the technical equipment for specific operations shall be planned on the basis of annual bilateral negotiations and agreements between the Agency and Member States. In accordance with those agreements and to the extent that it forms part of the minimum number of technical equipment for a given year, Member States shall make their technical equipment available for deployment at the request of the Agency, unless they are faced with an exceptional situation substantially affecting the discharge of national tasks. ***If a Member State invokes such an exceptional situation, it shall provide in writing comprehensive reasons and information on the situation to the Agency, the content of which shall be included in the report referred to in paragraph 7.*** Such request shall be made at least ***45 days for major technical equipment and 30 days for other equipment*** before the intended deployment. The contributions to the technical equipment pool shall be reviewed annually.

5. On a proposal of the Executive Director, the Management Board shall decide, on a yearly basis, on the rules relating to technical equipment, including the required overall minimum numbers per type of technical equipment, the conditions for deployment and reimbursement of costs. For budgetary purposes that decision should be taken by the Management Board *by 30 June each year*.
- 5a. In case a Rapid Border Intervention Operation is deployed, Article 16(12) will apply accordingly.*
- 5b. If unexpected needs for technical equipment for a joint operation or a rapid border intervention arise after the minimum amount of technical equipment has been set and those needs cannot be met from the technical equipment pool and the Rapid Reaction equipment pool, Member States shall, where possible, on an ad hoc basis make the necessary technical equipment available for deployment to the Agency upon its request.*

6. The Executive Director shall *regularly* report on the composition and the deployment of equipment which is part of the technical equipment pool to the Management Board **■** . Where the minimum number of technical equipment is not reached, the Executive Director shall inform the Management Board without delay. The Management Board shall take a decision on the prioritisation of the deployment of the technical equipment urgently and take the appropriate steps to remedy the identified shortcomings. The Management Board shall inform the Commission of the identified shortcomings and the steps taken. The Commission shall subsequently inform the European Parliament and the Council thereof, and of its own assessment.
7. The Agency shall *submit a report to* the European Parliament on an annual basis of the number of technical equipment that each Member State has committed to the technical equipment pool in accordance with this Article. *That report shall list the Member States that invoked the exceptional situation referred to in paragraph 4 in the previous year and include the reasons and information provided by the Member State concerned.*

8. Member States shall register in the technical equipment pool all the means of transport and operating equipment purchased under the Specific Actions of the Internal Security Fund in accordance with Article 7(1) of Regulation (EU) No 515/2014³⁴ of the European Parliament and of the Council or, *where relevant*, any other dedicated Union funding made available to the Member States in view of increasing the operational capacity of the Agency. That technical equipment shall form part of the minimum number of technical equipment for a given year.

The Member States shall make that technical equipment available for deployment to the Agency upon its request. *In case of an operation as mentioned in Article 16 or in Article 18*, it may not invoke the exceptional situation referred to in paragraph 4.

9. The Agency shall manage the records of the technical equipment pool as follows:
- (a) classification by type of equipment and by type of operation;
 - (b) classification by owner (Member State, Agency, other);

³⁴ 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).

- (c) overall numbers of required equipment;
 - (d) crew requirements if applicable;
 - (e) other information, such as registration details, transportation and maintenance requirements, national applicable export regimes, technical instructions, or other relevant information to handle the equipment correctly.
10. The Agency shall finance at 100% the deployment of the technical equipment which forms part of the minimum number of technical equipment provided by a given Member State for a given year. The deployment of technical equipment which does not form part of the minimum number of technical equipment shall be co-financed by the Agency up to a maximum of **100%** of the eligible expenses, taking into account the particular circumstances of the Member States deploying such technical equipment.

Article 39

Tasks and powers of the members of the teams

1. Members of the teams shall have the capacity to perform all tasks and exercise all powers for border control and return as well as those which are necessary for the realisation of the objectives of Regulation (EU) 2016/399 and Directive 2008/115/EC, respectively.
2. While performing their tasks and exercising their powers, members of the teams shall comply with Union and international law, and shall observe fundamental rights and the national law of the host Member State.
3. Members of the teams may only perform tasks and exercise powers under instructions from and, as a general rule, in the presence of border guards or staff involved in return-related tasks of the host Member State. **The** host Member State **may authorise members of the teams** to act on its behalf.

4. Members of the teams shall wear, *where appropriate*, their own uniform while performing their tasks and exercising their powers. They shall *also* wear *visible personal identification and* a blue armband with the insignia of the Union and the Agency on their uniforms, identifying them as participating in a joint operation, *migration management support teams*, pilot project, rapid border intervention, return operation or return intervention. For the purposes of identification vis-à-vis the national authorities of the host Member State, members of the teams shall, at all times, carry an accreditation document, which they shall present upon request.

5. While performing their tasks and exercising their powers, members of the teams may carry service weapons, ammunition and equipment as authorised according to the home Member State's national law. However, the host Member State may prohibit the carrying of certain service weapons, ammunition and equipment, provided that its own legislation applies the same prohibition to its own border guards or staff involved in return-related tasks. The host Member State shall, in advance of the deployment of the members of the teams, inform the Agency of the permissible service weapons, ammunition and equipment and of the conditions for their use. The Agency shall make this information available to Member States.

6. While performing their tasks and exercising their powers, members of the teams shall be authorised to use force, including service weapons, ammunition and equipment, with the consent of the home Member State and the host Member State, in the presence of border guards of the host Member State and in accordance with the national law of the host Member State. The host Member State may, with the consent of the home Member State, authorise members of the teams to use force in the absence of border guards of the host Member State.

7. Service weapons, ammunition and equipment may be used in legitimate self-defence and in legitimate defence of members of the teams or of other persons, in accordance with the national law of the host Member State.

8. For the purpose of this Regulation, the host Member State shall authorise members of the teams to consult ■ European databases ***and it may authorise them to consult its national databases*** the consultation of which *is* necessary for ***fulfilling operational aims specified in the operational plan on*** border checks, border surveillance and return. ***Member States shall ensure that they provide such database access in an efficient and effective manner.*** The members of the teams shall consult only those data which are required for performing their tasks and exercising their powers. The host Member State shall, in advance of the deployment of the members of the teams, inform the Agency of the national and European databases which may be consulted. The Agency shall make this information available to all Member States participating in the deployment.

That consultation shall be carried out in accordance with Union law and the national law of the host Member State in the area of data protection.

9. Decisions to refuse entry in accordance with Article **14** of Regulation (EU) **2016/399** shall be taken only by border guards of the host Member State or by the members of the teams if authorised by the host Member State to act on its behalf.

Article 40

Accreditation document

1. The Agency shall, in cooperation with the host Member State, issue a document in the official language of the host Member State and another official language of the institutions of the Union to the members of the teams for the purpose of identifying them and as proof of the holder's rights to perform the tasks and exercise the powers as referred to in Article 39. The document shall include the following features of each member of the teams:
 - (a) name and nationality;
 - (b) rank or job title;

(c) a recent digitised photograph; and

(d) tasks authorised to be performed *during the deployment*.

2. The document shall be returned to the Agency at the end of the joint operation, *migration management support teams*, pilot project, rapid border intervention, return operation or return intervention.

Article 41

Civil liability

1. Where members of the teams are operating in a host Member State, that Member State shall be liable in accordance with its national law for any damage caused by them during their operations.
2. Where such damage is caused by gross negligence or willful misconduct, the host Member State may approach the home Member State in order to have any sums it has paid to the victims or persons entitled on their behalf reimbursed by the home Member State.

3. Without prejudice to the exercise of its rights vis-à-vis third parties, each Member State shall waive all its claims against the host Member State or any other Member State for any damage it has sustained, except in cases of gross negligence or willful misconduct.
4. Any dispute between Member States relating to the application of paragraphs 2 and 3 which cannot be resolved by negotiations between them shall be submitted by them to the Court of Justice of the European Union in accordance with Article 273 TFEU.
5. Without prejudice to the exercise of its rights vis-à-vis third parties, the Agency shall meet costs related to damage caused to the Agency's equipment during deployment, except in cases of gross negligence or willful misconduct.

Article 42
Criminal liability

During the deployment of a joint operation, pilot project, *migration management support team*, rapid border intervention, return operation or return intervention, members of the teams shall be treated in the same way as officials of the host Member State with regard to any criminal offences that might be committed against them or by them.

Section 2
Information exchange and data protection

Article 43
Information exchange systems

1. The Agency may take all necessary measures to facilitate the exchange of information relevant to its tasks with the Commission and the Member States and, where appropriate, the relevant Union Agencies. It shall develop and operate an information system capable of exchanging classified information with those actors, as well as personal data referred to in Articles 44, 46, 47 and 48 in accordance with Council Decision *2013/488/EU*³⁵ and Commission Decision (EU, Euratom) *2015/444*³⁶.

³⁵ *Council Decision of 23 September 2013 on the security rules for protecting EU classified information (OJ L 274, 15.10.2013, p. 1).*

³⁶ Commission Decision (EU, Euratom) 2015/444 of 13 March 2015 on the security rules for protecting EU classified information (OJ L 72, 17.3.2015, p. 53).

2. The Agency may take all necessary measures to facilitate the exchange of information relevant for its tasks with the United Kingdom and Ireland if it relates to the activities in which they participate in accordance with Article 50 and Article 61(4).

Article 44

Data protection

1. The Agency shall apply Regulation (EC) No 45/2001 when processing personal data.
2. The Management Board shall establish measures for the application of Regulation (EC) No 45/2001 by the Agency, including those concerning the Data Protection Officer of the Agency. Those measures shall be established after consultation of the European Data Protection Supervisor.
3. Without prejudice to Articles 46, 47 and 48, the Agency may process personal data for administrative purposes.
4. Without prejudice to Article 47, the transfer of personal data processed by the Agency and the onward transfer by Member States to authorities of third countries or third parties, ***including international organisations***, of personal data processed in the framework of this Regulation shall be prohibited.

Article 45

Purposes of processing personal data

1. The Agency may process personal data only for the following purposes:
 - (a) performing its tasks of organising and coordinating joint operations, pilot projects, rapid border interventions and in the framework of the migration management support teams in accordance with Article 46;
 - (b) performing its tasks of organising and coordinating return operations and return interventions in accordance with Article 47;
 - (c) facilitating the exchange of information with Member States, the European Asylum Support Office, Europol or Eurojust in accordance with Article 46;
 - (d) risk analysis by the Agency in accordance with Article 10;
 - (e) identifying and tracking vessels in the framework of Eurosur in accordance with Article 48.
 - (f) *administrative tasks.*

2. Any such processing of personal data shall respect the principle of proportionality and be strictly limited to personal data necessary for the purposes referred to in paragraph 1.
3. A Member State or other Union Agency providing personal data to the Agency shall determine the purpose or the purposes for which it shall be processed as referred to in paragraph 1. ***The Agency may process such personal data for a different purpose which also falls under paragraph 1 only*** if authorised by the data provider of the information.
4. Member States and other Union Agencies may indicate, at the moment of transferring personal data, any restriction on access or use, in general or specific terms, including as regards transfer, erasure or destruction. Where the need for such restrictions becomes apparent after the transfer provision of information, they shall inform the Agency accordingly. The Agency shall comply with such restrictions.

Article 46

Processing of personal data collected during joint operations, pilot projects and rapid border interventions and by migration management support teams

1. The use by the Agency of personal data collected and transmitted to it by the Member States or by its own staff in the context of joint operations, pilot projects and rapid border interventions, and by migration management support *teams shall* be limited to:
 - (a) personal data regarding persons who are suspected, on reasonable grounds, by the competent authorities of the Member States of involvement in cross-border criminal activities, *such as migrant smuggling*, trafficking in human beings or terrorism;
 - (b) personal data regarding persons who cross the external borders *unauthorised* and whose data is collected by the European Border and Coast Guard Teams, including when acting in the framework of the migration management support teams;

(c) license plate numbers, *vehicle identification numbers*, telephone numbers or ship identification numbers, which are *linked to the persons referred to in (a) and (b)*, *and which are* necessary for investigating and analysing routes and methods used for *illegal* immigration and cross-border criminal activities.

2. Personal data referred to in paragraph 1 may be processed by the Agency in the following cases:

- (a) where transmission to *EASO*, Europol or Eurojust is necessary for use in accordance with their respective mandates and in accordance with Article 51;
- (b) where transmission to the authorities of the relevant Member States which are responsible for border control, migration, asylum or law enforcement is necessary for use in accordance with national legislation and national and *Union* data protection rules;

(ba) Personal data regarding persons referred to in paragraph (1)(b) shall only be transferred to law enforcement authorities in specific cases and when strictly necessary for the purpose of preventing, detecting, investigating or prosecuting serious crime;

(c) where necessary for the preparation of risk analyses.

3. The personal data shall be deleted as soon as they have been transmitted to the European Asylum Support Office, Europol or Eurojust or to the competent authorities of Member States or used for the preparation of risk analyses. The *storage period* shall in any event not exceed **90 days** after the date of the collection of those data. In the result of the risk analyses, data shall be anonymised.

Article 47

Processing of personal data in the context of return operations and return interventions

1. In performing its tasks of organising and coordinating the return operations and conducting return interventions, the Agency may process personal data of returnees.
2. The processing of such personal data shall be strictly limited to those personal data which are required for the purposes of the return operation or the return intervention.
3. The personal data shall be deleted as soon as the purpose for which they have been collected has been achieved and no later than 30 days after the end of the return operation or the return intervention.
4. Where the personal data of returnees are not transmitted to the carrier by a Member State, the Agency may transfer such data.

Article 48

Processing of personal data in the framework of Eurosur

The Agency may process personal data as set out in Article 13(2) of Regulation (EU) No 1052/2013.

Article 49

Security rules on the protection of classified information and non-classified sensitive information

1. The Agency shall apply the Commission's rules on security as set out in Commission Decision (EU, Euratom) 2015/444. Those rules shall apply, *inter alia*, to the exchange, processing and storage of classified information.

2. The Agency shall apply the security principles relating to the processing of non-classified sensitive information as set out in the Decision referred to in paragraph 1 of this Article and as implemented by the Commission. The Management Board shall establish measures for the application of those security principles.
- 2a. ***Classification shall not preclude information being made available to the European Parliament. The transmission and handling of information and documents transmitted to the European Parliament in accordance with this Regulation shall comply with rules concerning the forwarding and handling of classified information which are applicable between the European Parliament and the Commission.***

Section 3
Cooperation by the Agency

Article 50
Cooperation with Ireland and the United Kingdom

1. The Agency shall facilitate operational cooperation of the Member States with Ireland and the United Kingdom in specific activities.
2. Support to be provided by the Agency pursuant to Article 7(1)(j), (k) and (l) shall cover the organisation of return operations of Member States in which Ireland or the United Kingdom, or both, also participate.
3. The application of this Regulation to the borders of Gibraltar shall be suspended until the date on which an agreement is reached on the scope of the measures concerning the crossing by persons of the external borders.

Article 51

Cooperation with Union institutions, agencies, bodies, offices and international organisations

1. The Agency shall cooperate with the Commission, other Union institutions, the European External Action Service, *EASO*, Europol, the European Union Agency for Fundamental Rights, Eurojust, the European Union Satellite Centre, the European Maritime Safety Agency and the European Fisheries Control Agency as well as other Union, agencies, bodies, offices in matters covered by this Regulation, and in particular with the objectives of *better addressing migratory challenges* and *preventing and detecting* cross-border crime *such as migrant smuggling*, trafficking in human beings and terrorism.

To that end, the Agency may cooperate with international organisations competent in matters covered by this Regulation.

2. Such cooperation shall take place within the framework of working arrangements concluded with those bodies. Such arrangements shall have received the Commission's prior approval. In every case the Agency shall inform the European Parliament of any such arrangements.

3. The Agency shall cooperate with the Commission *and where relevant with Member States, in activities relating to this Regulation, and, although outside the scope of this Regulation, relating to the customs area including risk management, where these activities may support each other. This cooperation shall be without prejudice to the existing competences of the Commission and of the Member States.*

4. The Union institutions, agencies, bodies, offices and international organisations referred to in paragraph 1, shall use information received by the Agency only within the limits of their competences and in compliance with fundamental rights, including data protection requirements. Onward transmission or other communication of personal data processed by the Agency to other Union agencies or bodies shall be subject to specific working arrangements regarding the exchange of personal data and subject to the prior approval of the European Data Protection Supervisor. ***Any transfer of personal data by the Agency shall be in line with the data protection provisions laid down in Articles 44 to 48.*** As regards the handling of classified information, those arrangements shall provide that the Union institution, body, office, agency or international organisation concerned shall comply with security rules and standards equivalent to those applied by the Agency.

5. The Agency may also, with the agreement of the Member States concerned, invite observers of Union institutions, agencies, bodies, offices or international organisations to participate in its activities in particular, joint operations and pilot projects, risk analysis and training, to the extent that their presence is in accordance with the objectives of those activities, may contribute to the improvement of cooperation and the exchange of best practices, and does not affect the overall safety and security of those activities. The participation of those observers in risk analysis and training may take place only with the agreement of the Member States concerned. As regards joint operations and pilot projects the participation of observers is subject to agreement of the host Member State. Detailed rules on the participation of observers shall be included in the operational plan. Those observers shall receive the appropriate training from the Agency prior to their participation.

Article 52

European cooperation on coast guard functions

1. The Agency shall, in cooperation with the European Fisheries Control Agency and the European Maritime Safety Agency, support national authorities carrying out coast guard functions at national and Union level, and where appropriate, at international level by:
 - (a) sharing, *fusing and analysing* information available in ship reporting systems and other information systems hosted by or accessible to the Agencies, in accordance with their respective legal bases and without prejudice to the ownership of data by Member States;
 - (b) providing surveillance and communication services based on state-of-the-art technology, including space-based and ground infrastructure and sensors mounted on any kind of platform ;

- (c) capacity building by elaborating guidelines, recommendations and best practices as well as by **providing** training and exchange of staff **■** ;
- (ca) *enhancing the exchange of information and cooperation on coast guard functions including by analysing operational challenges and emerging risks in the maritime domain;*
- (d) capacity sharing *by* planning and implementation of multipurpose operations and the sharing of assets and other capabilities, *to the extent those are coordinated by the agencies and with the agreement of the competent authorities of the Member States concerned.*

2. The modalities of the cooperation on coast guard functions of the European Border and Coast Guard Agency with the European Fisheries Control Agency and the European Maritime Safety Agency shall be determined in a working arrangement, in accordance with *their respective mandates and* the financial rules applicable to the Agencies. *Such arrangement shall be approved by the Management Board of the Agency and the Administrative Boards of the European Maritime Safety Agency and the European Fisheries Control Agency.*

3. The Commission *shall, in close cooperation with the Member States, the Agency and the European Maritime Safety Agency and the European Fisheries Control Agency, make available*, a practical handbook on European cooperation on coast guard functions, containing guidelines, recommendations and best practices for the exchange of information **█**. *The Commission shall adopt the handbook in the form of a recommendation.*

Article 53

Cooperation with third countries

1. In matters covered by its activities and to the extent required for the fulfilment of its tasks, the Agency shall facilitate and encourage ***technical and*** operational cooperation between Member States and third countries, within the framework of the external relations policy of the Union, including with regard to the protection of fundamental rights ***and the principle of non-refoulement***. The Agency and the Member States shall comply with ***Union law, including*** norms and standards ***which form part of the*** Union ***acquis*** also when cooperation with third countries takes place on the territory of those countries. The establishment of cooperation with third countries shall serve to promote European border management and return standards.

2. The Agency may cooperate with the authorities of third countries competent in matters covered by this Regulation with the support of and in coordination with Union delegations. ***When doing so, it shall act within the framework of the external relations policy of the Union, including with regard to the protection of fundamental rights and the principle of non-refoulement*** as well as within the framework of working arrangements concluded with those authorities in accordance with Union law and policy. Those working arrangements shall ***specify the scope, nature and purpose of the cooperation and*** be related to the management of operational cooperation. Such ***draft*** arrangements shall have received the Commission's prior approval. ***The agency shall inform the Parliament before the Working Arrangement will be concluded. The Agency shall comply with Union law, including norms and standards which form part of the Union acquis.***

3. In circumstances requiring increased technical and operational assistance, the Agency may coordinate operational cooperation between Member States and third countries in the field of management of external borders. ***The Agency*** shall have the possibility of carrying out ***actions*** at the external borders involving one or more Member States and a third country neighbouring at least one of those Member States, subject to the agreement of that neighbouring third country, including on the territory of that third country. ***Operations shall be carried out on the basis of an operational plan agreed also by the Member State bordering the operational area. The participation of Member States in joint operations on the territory of third countries, shall be on voluntary basis.*** The Commission shall be informed of such activities.

- 3a. *A Status Agreement shall be concluded by the EU with the third country for the deployment of the members of the teams in actions where members of the teams will conduct executive powers, or in other actions when necessary. This agreement shall cover all aspects that are necessary for carrying out the actions, in particular the description of the scope of the operation, civil and criminal liability, tasks and powers of the members of the teams. The agreement shall ensure the full respect of fundamental rights during these operations.*
- 3b. *The Commission shall draw up a model Status Agreement for actions on the territory of third countries.*
4. The Agency shall cooperate with the competent authorities of third countries on return, including on the acquisition of travel documents.

5. The Agency may also, with the agreement of the Member States concerned invite observers from third countries to participate in its activities at the external borders referred to in Article 13, return operations referred to in Article 27, return interventions referred to in Article 32 and training referred to in Article 35, to the extent that their presence is in accordance with the objectives of those activities, may contribute to improving cooperation and the exchange of best practices, and does not affect the overall safety of those activities. The participation of those observers may take place only with the agreement of the Member States concerned regarding the activities referred to in Articles 13, **18**, 27 and 35 and only with the agreement of the host Member State regarding those referred to in Article 13 and 32. Detailed rules on the participation of observers shall be included in the operational plan. Those observers shall receive the appropriate training from the Agency prior to their participation ***and shall be required to adhere to the Codes of Conduct of the Agency while participating in its activities.***

6. The Agency shall participate in the implementation of international agreements concluded by the Union with third countries, within the framework of the external relations policy of the Union, and regarding matters covered by this Regulation.
7. The Agency may benefit from Union funding in accordance with the provisions of the relevant instruments supporting the external relations policy of the Union. It may launch and finance technical assistance projects in third countries regarding matters covered by this Regulation.
8. When concluding bilateral agreements with third countries Member States may, in agreement with the Agency, include provisions concerning the role and competence of the Agency in accordance with this Regulation, in particular regarding the exercise of executive powers by members of the European Border and Coast Guard Teams deployed by the Agency during the joint operations, pilot projects, rapid border interventions, return operations or return interventions. The Member States shall notify the Commission of any such provisions.

9. The Agency shall inform the European Parliament of the activities *referred to in this Article and shall include an assessment of the cooperation with third countries in its annual reports.*

Article 54

Liaison officers in third countries

1. The Agency may deploy experts of its own staff as liaison officers, who should enjoy the highest possible protection to carry out their duties, in third countries. They shall form part of the local or regional cooperation networks of immigration liaison officers and security experts of the Union and of the Member States, including the network set up pursuant to Council Regulation (EC) No 377/2004³⁷. *Liaison officers shall only be deployed to third countries in which border management practices comply with minimum human rights standards.*

³⁷ Council Regulation (EC) No 377/2004 of 19 February 2004 on the creation of an immigration liaison officers network (OJ L 64, 2.3.2004, p. 1).

2. Within the framework of the external relations policy of the Union, priority for deployment of liaison officers shall be given to those third countries which, on the basis of risk analysis, constitute a country of origin or transit regarding *illegal* immigration. On a reciprocal basis the Agency may receive liaison officers posted by those third countries. The Management Board shall adopt, on a proposal of the Executive Director the list of priorities on a yearly basis. The deployment of liaison officers shall be approved by the Management Board.

3. The tasks of the Agency's liaison officers shall include, in compliance with Union law and in accordance with fundamental rights, establishing and maintaining contacts with the competent authorities of the third country to which they are assigned with a view to contributing to the prevention of and fight against *illegal* immigration and the return of third-country nationals *who are the subject of return decisions issued by a Member State*. Those liaison officers shall coordinate closely with Union delegations.

4. The decision to deploy liaison officers to third countries shall be subject to receiving a prior opinion of the Commission, and the European Parliament shall be fully informed of those activities *without delay*.

Section 4

General Framework and Organisation of the Agency

Article 55

Legal status and location

1. The Agency shall be a body of the Union. It shall have legal personality.
2. In each of the Member States, the Agency shall enjoy the most extensive legal capacity accorded to legal persons under their laws. It may, in particular, acquire or dispose of movable and immovable property and may be party to legal proceedings.

3. The Agency shall be independent in relation to *implementing its* operational and technical *mandate*.
4. It shall be represented by its Executive Director.
5. The seat of the Agency shall be Warsaw, Poland, subject to the implementation of Article 56.

Article 56
Headquarters Agreement

1. The necessary arrangements concerning the accommodation to be provided for the Agency in the Member State in which the Agency has its seat and the facilities to be made available by that Member State, as well as the specific rules applicable to the Executive Director, the Deputy Executive Director, the members of the Management Board, the staff of the Agency and members of their families, in that Member State shall be laid down in a Headquarters Agreement between the Agency and the Member State in which the Agency has its seat.

2. The Headquarters Agreement shall be concluded after obtaining the approval of the Management Board and no later than *six* months after entry into force of this Regulation.
3. The Member State in which the Agency has its seat shall provide the best possible conditions to ensure proper functioning of the Agency, including multilingual, European-oriented schooling and appropriate transport connections.

Article 57

Staff

1. The Staff Regulations of Officials of the European Union and the Conditions of Employment of Other Servants of the Union and the rules adopted in agreement between the institutions of the Union for giving effect to those Staff Regulations and the Conditions of Employment of Other Servants of the Union shall apply to the Agency's staff.

2. For the purpose of implementing Article *11*, 21 and *31(2)* only a staff member of the Agency subject to the Staff Regulations of Officials of the European Union or to Title II of the Conditions of Employment of Other Servants of the European Union may be designated as a coordinating officer or a liaison officer. For the purpose of implementing Article 19(8), only *seconded border guards or other relevant staff* may be designated for attachment to the European Border and Coast Guard Teams. The Agency shall designate those national experts who shall be attached to the European Border and Coast Guard Teams in accordance with that Article.
3. The Management Board shall adopt the necessary implementing measures in agreement with the Commission pursuant to Article 110 of the Staff Regulations of Officials of the European Union.

4. The Management Board may adopt provisions to allow ■ border guards *or other relevant staff* from Member States to be seconded to the Agency. Those provisions shall take into account the requirements of Article 19(8), in particular the fact that the seconded ■ border guards *or other relevant staff* are considered as members of the teams and have the tasks and powers provided for in Article 39. They shall include provisions on the conditions of deployment.

Article 58

Privileges and immunities

The Protocol on the Privileges and Immunities of the European Union shall apply to the Agency and its staff.

Article 59

Liability

1. The contractual liability of the Agency shall be governed by the law applicable to the contract in question.

2. The Court of Justice of the European Union shall have jurisdiction to give judgment pursuant to any arbitration clause contained in a contract concluded by the Agency.
3. In the case of non-contractual liability, the Agency shall, in accordance with the general principles common to the laws of the Member States, make good any damage caused by its departments or by its staff in the performance of their duties.
4. The Court of Justice shall have jurisdiction in disputes relating to compensation for the damage referred to in paragraph 3.
5. The personal liability of its servants towards the Agency shall be governed by the provisions laid down in the Staff Regulations of Officials of the European Union and Conditions of Employment of Other Servants of the Union applicable to them.

Article 60

Administrative and management structure of the Agency

The administrative and management structure of the Agency shall comprise:

- (a) a Management Board ;
- (b) an Executive Director ;
-
- (d) a Consultative Forum; and
- (e) a Fundamental Rights Officer.

Article 61

Functions of the Management Board

- 1. *The Management Board shall be responsible for the taking of strategic decisions of the Agency in accordance with this Regulation.*

1. The Management Board shall:

- (a) appoint the Executive Director on a proposal from the Commission in accordance with Article 68;
- (b) appoint *the Deputy Executive Director on the proposal of the Executive Director* in accordance with Article 68;
- (c) adopt decisions *on conducting the vulnerability assessment in accordance with Article 12 (-1) and (6); the decisions setting out measures in accordance with Article 12(6) shall be adopted by a majority of two-third of the members entitled to vote;*
- (ca) *adopt decisions on the establishment of a common integrated risk analyses model in accordance with Article 10 (1);*

- (cb) adopt decisions on the nature of the deployment of liaison officers in Member States in accordance with Article 11 (2);*
- (cc) adopt an operational and technical strategy for the European integrated border management in accordance with article 3(2);*
- (cd) adopt a decision on the profiles and the overall number of border guards or other relevant staff to be made available for the European Border Guard teams, in accordance with article 19(2);*
- (ce) adopt a decision on the profiles and the minimum number of border guards or other relevant staff that correspond to these profiles to be made available for the rapid reaction pool of European Border Guard Teams, in accordance with article 19(4) by a three-quarter majority;*

- (d) adopt *an* annual activity report of the Agency for the previous year and forward it by 1 July at the latest to the European Parliament, the Council, the Commission and the Court of Auditors; the ■ annual activity report shall be made public;
- (e) before 30 November each year, and after taking into account the opinion of the Commission, adopt, by a majority of two-thirds of the members entitled to vote, a single programming document containing the Agency's multiannual programming and its work programme for the following year and forward it to the European Parliament, the Council and the Commission;
- (f) establish procedures for taking decisions related to the operational *and technical* tasks of the Agency by the Executive Director;

- (g) adopt, by a majority of two-thirds of the members entitled to vote, the annual budget of the Agency and exercise other functions in respect of the Agency's budget pursuant to Section 5 of this Chapter;
- (h) exercise disciplinary authority over the Executive Director and over the Deputy Director, in agreement with the Executive Director;
- (i) establish its Rules of Procedure;
- (j) establish the organisational structure of the Agency and adopt the Agency's staff policy, in particular the multiannual staff policy plan. In accordance with the relevant provisions of the Commission Regulation (EC, Euratom) No 2343/2002³⁸ the multiannual staff policy plan shall be submitted to the Commission and the budgetary authority after receiving a favourable opinion of the Commission;

³⁸ Commission Regulation (EC, Euratom) No 2343/2002 of 23 December 2002 on the framework Financial Regulation for the bodies referred to in Article 185 of Council Regulation (EC, Euratom) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities (OJ L 357, 31.12.2002, p.72).

- (k) adopt an anti-fraud strategy, proportionate to the risk of fraud, taking into account the costs and benefits of the measures to be implemented;
- (l) adopt internal rules for the prevention and management of conflicts of interest in respect of its members;
- (m) exercise, in accordance with paragraph 7, with respect to the staff of the Agency, the powers conferred by the Staff Regulations of Officials of the European Union on the Appointing Authority and by the Conditions of Employment of Other Servants of the Union on the Authority Empowered to Conclude a Contract of Employment ('the Appointing Authority powers');
- (n) adopt appropriate implementing rules for giving effect to the Staff Regulations of Officials of the European Union and the Conditions of Employment of Other Servants of the Union in accordance with Article 110 of the Staff Regulations;

- (o) ensure adequate follow-up to findings and recommendations stemming from the internal or external audit reports and evaluations, as well as from investigations of the European Anti-fraud Office (OLAF);
- (p) adopt and regularly update the communication and dissemination plans referred to in Article 7(3) ■ ;
- (q) appoint an Accounting Officer, subject to the Staff Regulations of Officials of the European Union and the Conditions of Employment of Other Servants of the Union, who shall be totally independent in the performance of his or her duties.

(qa) decide on a common vulnerability assessment methodology, including objective criteria of the vulnerability assessment and the frequency and modalities for carrying out consecutive vulnerability assessments on Member States and on enhanced assessment and monitoring of a Member State as referred to in Article 12(1).

(r) designate the Fundamental Rights Officer in accordance with Article 71(1);

(s) approve the working arrangements with third countries;

2. Proposals for decisions *of the Management Board as referred to in paragraph 1* on specific activities of the Agency to be carried out at, or in the immediate vicinity of, the external border of any particular Member State shall require a vote in favour of their adoption by the Member of the Management Board representing that Member State.

3. The Management Board may advise the Executive Director on any matter ■ related to the development of operational management of the external borders and return, including activities related to research.
4. Should Ireland and/or the United Kingdom request to participate in specific activities, the Management Board shall decide thereon.

The Management Board shall take its decision on a case-by-case basis by an absolute majority of its members with a right to vote. In its decision, the Management Board shall consider if the participation of Ireland and/or the United Kingdom contributes to the achievement of the activity in question. The decision shall set out the financial contribution of Ireland and/or the United Kingdom to the activity for which a request for participation has been made.

5. The Management Board shall forward annually to the budgetary authority any information relevant to the outcome of the evaluation procedures conducted by the Agency.
6. The Management Board may establish a small-sized Executive Board **■**, to assist it and the Executive Director with regard to the preparation of the decisions, programmes and activities to be adopted by the Management Board and when necessary, because of urgency, to take certain provisional decisions on behalf of the Management Board, ***excluding decisions on which a reinforced majority is needed in the Management Board. The Management Board may provide for the delegation of certain clearly defined tasks to the Executive Board, in particular where this improves the efficiency of the Agency excluding tasks related to decisions on which a reinforced majority is needed in the Management Board.***

7. The Management Board shall adopt, in accordance with Article 110 of the Staff Regulations, a decision based on Article 2(1) of the Staff Regulations of Officials of the European Union and on Article 6 of the Conditions of Employment of Other Servants of the Union, delegating relevant Appointing Authority powers to the Executive Director and defining the conditions under which this delegation of powers can be suspended. The Executive Director shall be authorised to sub-delegate those powers.

Where exceptional circumstances so require, the Management Board may by way of a decision temporarily suspend the delegation of the Appointing Authority powers to the Executive Director and those sub-delegated by the latter and exercise them itself or delegate them to one of its members or to a staff member other than the Executive Director.

Article 62

Composition of the Management Board

1. Without prejudice to paragraph 3, the Management Board shall be composed of one representative of each Member State and two representatives of the Commission, all with voting rights. To this effect, each Member State shall appoint a member of the Management Board as well as an alternate who will represent the member in his or her absence. The Commission shall appoint two members and their alternates. The duration of the terms of office shall be four years. The terms of office shall be extendable.
2. The Management Board members shall be appointed on the basis of their degree of high level relevant experience and expertise in the field of operational cooperation on border management and return, taking into account relevant managerial, administrative and budgetary skills. ■ They shall aim to achieve a balanced representation between men and women on the Management Board.

3. Countries associated with the implementation, application and development of the Schengen *acquis* shall participate in the Agency. They shall have one representative and one alternate each in the Management Board. Under the relevant provisions of their association agreements, arrangements have been developed that specify the nature and extent of, and the detailed rules for, the participation by those countries in the work of the Agency, including provisions on financial contributions and staff.

Article 63

Multiannual programming and annual work programmes

1. The Management Board shall, by 30 November each year, adopt a programming document containing the Agency's multiannual programming and annual programming for the following year, based on a draft put forward by the Executive Director, taking into account the opinion of the Commission and, as regards the multiannual programming, after having consulted the European Parliament. The Management Board shall forward that document to the European Parliament, the Council and the Commission.

2. The document referred to in paragraph 1 shall become definitive after the final adoption of the general budget and, where necessary, shall be adjusted accordingly.
3. The multiannual programming shall set out overall strategic programming in the medium and long term, including the objectives, expected results and performance indicators, as well as resource planning, including the multiannual budget and staff. The multiannual programming shall set the strategic areas of interventions and explain what needs to be done to achieve the objectives. It shall include a strategy for relations with third countries and international organisations, as well as the actions linked to that strategy.
4. The multiannual programming shall be implemented by means of annual work programmes and shall, where appropriate, be updated following the outcome of the evaluation referred to in Article 80. The conclusion of those evaluations shall also be reflected, where appropriate, in the annual work programme for the following year.

5. The annual work programme shall contain a description of the activities to be financed comprising detailed objectives and expected results including performance indicators. It shall also contain an indication of the financial and human resources allocated to each activity, in accordance with the principles of activity-based budgeting and management. The annual work programme shall be consistent with the multiannual programming. It shall clearly indicate tasks that have been added, changed or deleted compared to the previous financial year.
6. The annual work programme shall be adopted according to the Union legislative programme in relevant areas of the management of external borders and returns;
7. Where, after adoption of an annual work programme, a new task is assigned to the Agency, the Management Board shall amend the annual work programme.

8. Any substantial amendment to the annual work programme shall be adopted by the same procedure as that applicable to adoption of the initial annual work programme. The Management Board may delegate the power to make non-substantial amendments to the annual work programme to the Executive Director.

Article 64

Chairmanship of the Management Board

1. The Management Board shall elect a Chairperson and a Deputy Chairperson from among its members with voting rights. The Chairperson and the Deputy Chairperson shall be elected by a majority of two-thirds of the members of the Management Boards with voting rights. The Deputy Chairperson shall *ex officio* replace the Chairperson in the event of his or her being prevented from attending to his or her duties.

2. The term of office of the Chairperson and Deputy Chairperson shall expire when their respective membership of the Management Board ceases. Subject to this provision, the duration of the terms of office of the Chairperson or Deputy Chairperson shall be four years. These terms of office shall be extendable once.

Article 65

Meetings

1. Meetings of the Management Board shall be convened by its Chairperson.
2. The Executive Director of the Agency shall take part in the deliberations, without the right to vote.
3. The Management Board shall hold at least two ordinary meetings a year. In addition, it shall meet at the initiative of the Chairperson, at the request of the Commission, or at the request of at least one third of its members.

4. Ireland and the United Kingdom shall be invited to attend the meetings of the Management Board.
5. The Management Board may invite a representative of *relevant Union institutions, bodies, offices and agencies*.
6. The Management Board may invite, *in accordance with its rules of procedure*, any other person whose opinion may be of interest to attend its meetings as an observer.
7. The members of the Management Board may, subject to the provisions of its Rules of Procedure, be assisted by advisers or experts.
8. The secretariat for the Management Board shall be provided by the Agency.

Article 66

Voting

1. Without prejudice to Article **19(4)**, **Article** 61(1)(c), (e) and (g), Article 64(1) and Article 68(2) and (4), the Management Board shall take its decisions by an absolute majority of its members with a right to vote.
2. Each member shall have one vote. ■ In the absence of a member, his or her alternate shall be entitled to exercise his or her right to vote. ***The Executive Director shall not vote.***
3. The rules of procedure shall establish the more detailed voting arrangements, in particular, the conditions for a member to act on behalf of another member as well as any quorum requirements, where appropriate.

4. Countries associated with the implementation, application and development of the Schengen *acquis* have limited voting rights in accordance with the respective arrangements. In order to allow the associated countries to exercise their right to vote, the Agency shall detail the agenda identifying the points for which a limited voting right has been granted.

Article 67

Functions and powers of the Executive Director

1. The Agency shall be managed by its Executive Director, who shall be completely independent in the performance of his or her duties. Without prejudice to the respective competencies of the *Union institutions* and the Management Board, the Executive Director shall neither seek nor take instructions from any government or from any other body.

2. The European Parliament or the Council may invite the Executive Director to report on the carrying out of his or her tasks, ***including*** on the implementation and monitoring of the Fundamental Rights Strategy, the **■** annual activity report of the Agency for the previous year, the work programme for the following year and the Agency's multiannual programming ***or any other matter related to the activities of the Agency. The Executive Director shall make a statement before the European Parliament, if requested and report to it regularly.***

3. ***In accordance with this Regulation, the Executive Director shall be responsible for the preparation and implementation of the strategic decisions taken by the Management Board as well as for the taking of decisions related to the operational activities of the Agency. The Executive Director shall*** have the following functions and powers:

- (a) to *propose*, prepare and implement the *strategic* decisions and programmes and activities adopted by the Agency's Management Board within the limits specified by this Regulation, its implementing rules and any applicable law;
- (b) to take all necessary steps, including the adoption of internal administrative instructions and the publication of notices, to ensure the day-to-day administration and functioning of the Agency in accordance with the provisions of this Regulation;
- (c) to prepare each year the programming document and to submit it to the Management Board after consulting the Commission;
- (d) to prepare each year the ■ annual activity report on the Agency's activities and submit it to the Management Board;

- (e) to draw up a draft statement of estimates of the revenues and expenditure of the Agency pursuant to Article 75, and implement the budget pursuant to Article 76;
- (f) to delegate his or her powers to other members of the Agency's staff subject to rules to be adopted in accordance with the procedure referred to in Article 61(1)(i);
- (g) to adopt a **recommendation** on ■ measures in accordance with Article 12(5), including to propose to Member States to initiate and carry out joint operations, rapid border interventions or other action referred to in Article 13(2);
- (h) to evaluate, approve and coordinate proposals made by Member States for joint operations or rapid border interventions in accordance with Article 14(3);
- (ha) to evaluate, approve and coordinate proposals made by Member States for joint return operations and return interventions in accordance with Articles 27 and 32;**

- (i) to ensure the implementation of the operational plans referred to in Articles 15, 16 and 32(4);
- (j) to assess the request for assistance of a Member State for migration management support teams and the assessment of its needs, in coordination with relevant Union Agencies in accordance with Article 17(2);
- (k) to ensure the implementation of the *Council* decision referred to in Article 18;
- (l) to withdraw financing of *activities* in accordance with Article 24;
- (m) to evaluate the results of *activities* in accordance with Article 25;

- (n) to identify the minimum number of technical equipment in accordance with its needs, notably in order to be able to carry out joint operations, *migration management support teams, return interventions, return operations* and rapid border interventions, in accordance with Article 38(2);
- (o) to prepare an action plan following-up on the conclusions of internal or external audit reports and evaluations, as well as investigations by the European Anti-fraud Office (OLAF) and reporting on progress twice a year to the Commission and regularly to the Management Board;
- (p) to protect the financial interests of the Union by applying preventive measures against fraud, corruption and any other illegal activities, by effective checks and, if irregularities are detected, by recovering amounts wrongly paid and, where appropriate, by imposing effective, proportionate and dissuasive administrative and financial penalties;
- (q) to prepare an anti-fraud strategy for the Agency and present it to the Management Board for approval.

4. The Executive Director shall be accountable for his *or her* activities to the Management Board.
5. The Executive Director shall be the legal representative of the Agency.

Article 68

Appointment of the Executive Director and the Deputy Executive Director

1. The Commission shall propose **at least three** candidates for the post of Executive Director based on a list following publication of the post in the *Official Journal of the European Union* and other press or internet sites as appropriate.
2. The Executive Director shall be appointed by the Management Board on the grounds of merit and documented high-level administrative and management skills, as well as **relevant** senior professional experience in the field of management of the external borders and return. ***Before appointment, the candidates proposed by the Commission shall be invited to make a statement before the competent committee or committees of the European Parliament and answer questions put by its or their members.***

After that statement, the European Parliament shall adopt an opinion setting out its views and may indicate a preferred candidate.

The Management Board shall appoint the Executive Director taking these views into account. The Management Board shall take its decision by a two-thirds majority of all members with a right to vote.

If the Management Board takes a decision to appoint a candidate other than the candidate whom the European Parliament indicated as its preferred candidate the Management Board shall inform the European Parliament and the Council in writing of the manner in which its opinion was taken into account.

Power to dismiss the Executive Director shall lie with the Management Board, acting on a proposal from the Commission **■** .

3. The Executive Director shall be assisted by a Deputy Executive Director. If the Executive Director is absent or indisposed, the Deputy Executive Director shall take his or her place.
4. The Deputy Executive Director shall be appointed by the Management Board on the grounds of merit and documented appropriate administrative and management skills, as well as relevant professional experience in the field of management of the external borders and return on the proposal of ■ the Executive Director. ***The Executive Director shall propose at least three candidates for the post of Deputy Executive Director.*** The Management Board shall take its decision by a two-thirds majority of all members with a right to vote.


Power to dismiss the Deputy Executive Director shall be with the Management Board, according to the same procedure.

5. The term of office of the Executive Director shall be five years. By the end of that period, the Commission shall undertake an assessment that takes into account an evaluation of the Executive Director's performance and the Agency's future tasks and challenges.
6. The Management Board, acting on a proposal from the Commission that takes into account the assessment referred to in paragraph 5, may extend the term of office of the Executive Director once, for no more than five years.
7. The term of the office of the Deputy Executive Director shall be five years. It may be extended by the Management Board once for another period of up to five years.



Article 70

Consultative Forum

1. A Consultative Forum shall be established by the Agency to assist the Executive Director and the Management Board *with independent advice* in fundamental rights matters.
2. The Agency shall invite *EASO*, the European Union Agency for Fundamental Rights, the United Nations High Commissioner for Refugees and other relevant organisations to participate in the Consultative Forum. On a proposal by the Executive Director, the Management Board shall decide on the composition  and the modalities of the transmission of information to the Consultative Forum. *The Consultative Forum shall, after consulting the Management Board and the Executive Director, define its working methods and set up its work programme.*
3. The Consultative Forum shall be consulted on the further development and implementation of the Fundamental Rights Strategy, *on the setting-up of the complaints mechanism*, Codes of Conduct and common core curricula.

4. The Consultative Forum shall prepare an annual report of its activities. That report shall be made publicly available.
5. ***Without prejudice to the tasks of the Fundamental Rights Officer***, the Consultative Forum shall have ***effective*** access to all information concerning the respect for fundamental rights, including by carrying out on spot visits to joint operations, or rapid border interventions subject to the agreement of the host Member State, ***hotspot areas, return operations and return interventions***.

Article 71

Fundamental Rights Officer

1. A Fundamental Rights Officer ***with the task of contributing to the fundamental rights strategy, monitoring compliance with fundamental rights and promoting the respect of fundamental rights by the Agency*** shall be designated by the Management Board and shall have the necessary qualifications and experience in the field of fundamental rights.

2. The Fundamental Rights Officer shall be independent in the performance of his or her duties as a Fundamental Rights Officer, he or she shall report directly to the Management Board and cooperate with the Consultative Forum. The Fundamental Rights Officer shall report on a regular basis and as such contribute to the mechanism for monitoring fundamental rights.
3. The Fundamental Rights Officer shall be consulted on the operational plans drawn up in accordance with Articles 15, 16 *and 27* and *Article* 32(4) and shall have access to all information concerning respect for fundamental rights, in relation to all the activities of the Agency.

Article 72
Complaint Mechanism

1. The Agency, in cooperation with the Fundamental Rights Officer, shall take the necessary measures to set up a complaint mechanism in accordance with this Article to monitor and ensure the respect for fundamental rights in all the activities of the Agency.

2. Any person who is directly affected by the actions of staff involved in a joint operation, pilot project, rapid border intervention, *migration management support teams*, return operation or return intervention, and who considers him or herself to have been the subject of a breach of his or her fundamental rights due to those actions, or any *party representing* such a person, may submit a complaint, in writing, to the Agency.

3. Only substantiated complaints involving concrete fundamental rights violations shall be admissible. ■
4. The Fundamental Rights Officer shall be responsible for handling complaints received by the Agency in accordance with the right to good administration. For this purpose, the Fundamental Rights Officer shall review the admissibility of a complaint, register admissible complaints, forward all registered complaints to the Executive Director, forward complaints concerning *members of the teams* to the home Member State, *inform the relevant authority or body competent for fundamental rights in a Member State*, and register *and ensure* the follow-up by the Agency or that Member State.

4a. *In accordance with the right to good administration, if a complaint is admissible, complainants shall be informed that a complaint has been registered, that an assessment has been initiated and that a response may be expected as soon as it becomes available. If a complaint is forwarded to national authorities or bodies, the complainant shall be provided with their contact details. If a complaint is not admissible, complainants shall be informed of the reasons and, if possible, provided with further options for addressing their concerns.*

Any decision shall be in written form and reasoned.

5. In *the* case of a registered complaint concerning a staff member of the Agency, the Executive Director shall ensure appropriate follow-up, *in consultation with the Fundamental Rights Officer*, including disciplinary measures as necessary. The Executive Director shall report back *within a determined timeframe* to the Fundamental Rights Officer as to the findings and follow-up given by the Agency to a complaint, *including disciplinary measures as necessary*.

If a complaint is related to data protection issues, the Executive Director shall involve the Data Protection Officer of the Agency. The Fundamental Rights Officer and the Data Protection Officer shall establish, in writing, a memorandum of understanding specifying their division of tasks and cooperation as regards complaints received.

6. In *the* case of a registered complaint concerning a border guard of a host Member State or a member of the teams, including seconded members of the teams or seconded national experts, the home Member State shall ensure appropriate follow-up, including disciplinary measures as necessary or other measures in accordance with national law. The relevant Member State shall report back to the Fundamental Rights Officer as to the findings and follow-up to a complaint *within a determined time period, and if necessary, at regular intervals thereafter. The Agency shall follow-up the matter if no report is received from the relevant Member State.*

- 6a. *Where a border guard or a seconded national expert is found to have violated fundamental rights or international protection obligations, the Agency may request the Member State to remove that border guard or seconded national expert immediately from the activity of the Agency or the rapid reaction pool.*
7. The Fundamental Rights Officer shall report to the Executive Director and to the Management Board as to the findings and follow-up given to complaints by the Agency and the Member States. *The Agency shall include in its annual report information on the complaints mechanism.*

9. The Fundamental Rights Officer shall, *in accordance with the provisions set out above and* after consulting the Consultative Forum, draw up a standardised complaint form requiring detailed and specific information concerning the alleged breach of fundamental rights *and any further detailed rules as necessary*. The Fundamental Rights Officer shall submit that form *and any further detailed rules as necessary* to the Executive Director and to the Management Board.

The Agency shall ensure that *information about the possibility and procedure for making a complaint is readily available, including for vulnerable persons*. The standardised complaint form *shall be made* available in ■ languages *that third-country nationals understand or are reasonably believed to understand* on the Agency's website and in hardcopy during all activities of the Agency. Complaints shall be considered by the Fundamental Rights Officer even when they are not submitted in the standardised complaint form.

10. Any personal data contained in a complaint shall be handled and processed by the Agency **including** the Fundamental Rights Officer in accordance with Regulation (EC) No 45/2001 and by Member States in accordance with Directive 95/46/EC and Council Framework Decision 2008/977/JHA.

The submission of the complaint is understood as the complainant consenting to the processing of his or her personal data in the meaning of point (d) of Article 5 of Regulation (EC) No 45/2001 by the Agency and the Fundamental Rights Officer.

In order to safeguard the interest of the complainants, complaints shall be dealt with confidentially **by the Fundamental Rights Officer in accordance with national and Union law** unless the complainant **explicitly** waives his or her right to confidentiality. For complainants who waive their right to confidentiality, it is understood that he or she consents to the Fundamental Rights Officer or the Agency disclosing his or her identity **to the competent authorities or bodies** in relation to the matter under complaint, **where necessary**.

Article 73

Language arrangements

1. The provisions laid down in Regulation No 1³⁹ shall apply to the Agency.
2. Without prejudice to decisions taken on the basis of Article 342 TFEU, the annual activity report and the work programme referred to in Article 61(1)(d) and (e), shall be produced in all official languages of the Union.
3. The translation services required for the functioning of the Agency shall be provided by the Translation Centre for the bodies of the European Union.

Article 74

Transparency and communication

1. The Agency shall be subject to Regulation (EC) No 1049/2001 when handling applications for access to documents held by it.

³⁹ Regulation No 1 *of 15 April 1958* determining the languages to be used by the European Economic Community (OJ 17, 6.10.58, p. 385, English special edition: Series I Chapter 1952-1958, p. 59).

2. The Agency *shall* communicate on its own initiative in the fields within its mission. It shall make public *relevant information including* the ■ annual activity report referred to in Article 61(1)(d) and ensure, *without prejudice to Article 49*, in particular that the public and any interested party are rapidly given objective, *comprehensive*, reliable and easily understandable information with regard to its work, *without revealing operational information which, if made public, would jeopardise attainment of the objective of operations*.
3. The Management Board shall lay down the practical arrangements for the application of paragraphs 1 and 2.

4. Any natural or legal person shall be entitled to address himself or herself in writing to the Agency in any of the official languages of the Union. He or she shall have the right to receive an answer in the same language.
5. Decisions taken by the Agency pursuant to Article 8 of Regulation (EC) No 1049/2001 may give rise to the lodging of a complaint to the Ombudsman or form the subject of an action before the Court of Justice of the European Union, under the conditions laid down in Articles 228 and 263 TFEU respectively.

Section 5

Financial requirements

Article 75

Budget

1. The revenue of the Agency shall consist, without prejudice to other types of income, of:
 - (a) a subsidy from the Union entered in the general budget of the European Union (Commission section);

- (b) a contribution from the countries associated with the implementation, application and development of the Schengen *acquis* as established in the respective arrangements that specify the financial contribution;
 - (c) Union funding in the form of delegation agreements or ad-hoc grants in accordance with its financial rules referred to in Article 78 and with the provisions of the relevant instruments supporting the policies of the Union;
 - (d) fees for services provided;
 - (e) any voluntary contribution from the Member States.
2. The expenditure of the Agency shall include the staff, administrative, infrastructure and operational expenses.

3. The Executive Director shall draw up a draft statement of estimates of the Agency's revenue and expenditure for the following financial year, including an establishment plan, and shall forward it to the Management Board.
4. Revenue and expenditure shall be in balance.
5. The Management Board shall, on the basis of the draft statement of estimates drawn up by the Executive Director, adopt a provisional draft estimate of the Agency's revenue and expenditure, including the provisional establishment plan and forward them ***together with the draft single programming document*** by 31 January to the ***European Parliament, the Council and the*** Commission.
6. The Management Board shall send the final draft estimates of the Agency's revenue and expenditure including the draft establishment plan accompanied by the preliminary work programme by 31 March to the Commission.

7. The estimate shall be forwarded by the Commission to the European Parliament and the Council (hereinafter referred to as the budgetary authority) together with the ■ draft budget of the European Union.
8. On the basis of the estimate, the Commission shall enter in the draft general budget of the European Union the estimates it deems necessary for the establishment plan and the amount of the subsidy to be charged to the general budget, which it shall place before the budgetary authority in accordance with Articles 313 and 314 TFEU.
9. The budgetary authority shall authorise the appropriations for the subsidy to the Agency.

The budgetary authority shall adopt the establishment plan for the Agency.

10. The Management Board adopts the Agency's budget. It shall become final following the final adoption of the general budget of the European Union. Where appropriate, it shall be adjusted accordingly.
11. Any modification to the budget, including the establishment plan, shall follow the same procedure.
12. For any building project likely to have significant implications for the budget the Agency the provisions of Commission Delegated Regulation (EU) No 1271/2013⁴⁰ shall apply.
13. In the view of financing the deployment of rapid border interventions and return interventions, the budget of the Agency adopted by the Management Board shall include a financial operational reserve amounting at least to 4% of the allocation foreseen for the operational activities. ***On 1 October each year, at least one-quarter of the reserve should remain available in order to cover needs arising until the end of the year.***

⁴⁰ Commission Delegated Regulation (EU) No 1271/2013 of 30 September 2013 on the framework financial regulation for the bodies referred to in Article 208 of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council (OJ L 328, 7.12.2013, p. 42).

Article 76

Implementation and control of the budget

1. The Executive Director shall implement the Agency's budget.
2. By 1 March at the following financial year (year N + 1), the Agency's accounting officer shall communicate the provisional accounts for the financial year (year N) to the Commission's accounting officer and to the Court of Auditors. The Commission's accounting officer shall consolidate the provisional accounts of the institutions and decentralised bodies in accordance with Article 147 of Regulation (EC, Euratom) No 966/2012 of the European Parliament and of the Council⁴¹.
3. The Agency shall send a report on the budgetary and financial management for year N to the European Parliament, the Council and the Court of Auditors by 31 March of year N + 1.

⁴¹ Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002 (OJ L 298, 26.10.2012, *p. 1*).

4. The Commission's accounting officer shall send the Agency's provisional accounts for year N, consolidated with the Commission's accounts, to the Court of Auditors by 31 March of year N + 1.
5. On receipt of the Court of Auditors' observations on the Agency's provisional accounts for year N, pursuant to Article 148 of Regulation (EC, Euratom) No 966/2012, the Executive Director shall draw up the Agency's final accounts under his or her own responsibility and forward them to the Management Board for an opinion.
6. The Management Board shall deliver an opinion on the Agency's final accounts for year N.
7. By 1 July of year N + 1 at the latest, the Executive Director shall send the final accounts, together with the opinion of the Management Board, to the Commission, the Court of Auditors, the European Parliament and the Council.

8. The final accounts for year N shall be published in the Official Journal of the European Union by 15 November of year N + 1.
9. The Executive Director shall send the Court of Auditors a reply to its observations by 30 September of year N + 1 at the latest. He shall also send this reply to the Management Board.
10. The Executive Director shall submit to the European Parliament, at the latter's request, any information required for the smooth application of the discharge procedure for year N, in accordance with Article 165(3) of Regulation (EC, Euratom) No 966/2012.
11. On a recommendation from the Council acting by qualified majority, the European Parliament shall, before 15 May of the year N + 2, give a discharge to the Executive Director of the Agency in respect of the implementation of the budget for the year N.

Article 77
Combating fraud

1. In order to combat fraud, corruption and other unlawful activities the provisions of Regulation (EU, Euratom) No 883/2013 shall apply without restriction. The Agency shall accede to the Inter-institutional Agreement of 25 May 1999 concerning internal investigations by the European Anti-fraud Office (OLAF) and shall adopt, without delay, the appropriate provisions applicable to all the employees of the Agency using the template set out in the Annex to that Agreement.

2. The Court of Auditors shall have the power of audit, on the basis of documents and on the spot, over all grant beneficiaries, contractors and subcontractors who have received Union funds from the Agency.

3. OLAF may carry out 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 connection with a grant or a contract funded by the Agency, in accordance with the provisions and procedures laid down in Regulation (EU, Euratom) No 883/2013 and *Council* Regulation (Euratom, *EC*) No 2185/96⁴².
4. Without prejudice to paragraphs 1, 2 and 3, cooperation agreements with third countries and international organisations, contracts, grant agreements and grant decisions of the Agency shall contain provisions expressly empowering the Court of Auditors and OLAF to conduct such audits and investigations, according to their respective competences.

⁴² 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).

Article 77a

Prevention of conflicts of interest

The Agency shall adopt internal rules requiring the members of their bodies and their staff members to avoid any situation liable to give rise to a conflict of interest during their employment or term of office and to report such situations.

Article 78

Financial provision

The financial rules applicable to the Agency shall be adopted by the Management Board after consulting the Commission. They shall not depart from Delegated Regulation (EU) No 1271/2013 unless such a departure is specifically required for the Agency's operation and the Commission has given its prior consent.

Chapter IIIa

Amendments

Article 78a

Amendment to Regulation (EU) 2016/399

In Regulation (EU) 2016/399, Article 29(1) is replaced by the following:

- "1. In exceptional circumstances, where the overall functioning of the area without internal border control is put at risk as a result of persistent serious deficiencies relating to external border control as referred to in Article 21 of this Regulation or as a result of the non-compliance of a Member State with a Council decision referred to in Article 18(1) of Regulation (EU) 2016/... of the European Parliament and of the Council*, and insofar as those circumstances constitute a serious threat to public policy or internal security within the area without internal border control or within parts thereof, border control at internal borders may be reintroduced in accordance with paragraph 2 of this Article for a period of up to six months. That period may be prolonged, no more than three times, for a further period of up to six months if the exceptional circumstances persist.*

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- * Regulation (EU) 2016/... of the European Parliament and of the Council of ... on the European Border [and Coast] Guard and repealing Regulation (EC) No 2007/2004, Regulation (EC) No 863/2007 and Council Decision 2005/267/EC, and amending Regulation (EU) 2016/399 of the European Parliament and of the Council."*

Chapter IV
Final provisions

I

Article 80
Evaluation

1. By ... [three years *after* the date of entry into force of this Regulation], and every *four* years thereafter, the Commission shall *commission an independent external evaluation* to assess particularly *the results achieved by the Agency having regard to its objectives, mandate and tasks*, the impact, effectiveness and efficiency of the Agency's performance and its working practices in relation to its objectives, mandate and tasks *and the implementation of the European cooperation on coast guard functions*. The evaluation shall, in particular, address the possible need to modify the mandate of the Agency, and the financial implications of any such modification.

The evaluation shall include a specific analysis on the way the Charter *and other relevant Union law* was complied with in the application of this Regulation.

2. The Commission shall send the evaluation report together with its conclusions on the report, to the European Parliament, the Council and the Management Board. *The Management Board may issue recommendations regarding changes to this Regulation to the Commission.* The evaluation report and the conclusions on the report shall be made public.

█

Article 81

Repeal

1. Council Regulation (EC) No 2007/2004, Regulation (EC) No 863/2007 and Council Decision 2005/267/EC are repealed.
2. References to the repealed regulations shall be construed as references to this Regulation in accordance with the Annex.

Article 82

Entry into force and applicability

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

Article 19(5) *and (5a) and Article 38(3a) shall apply from ... [two months after the entry into force of this Regulation]*. Articles 28, 29, 30 and 31 shall apply from ... [three months after the entry into force of this Regulation].

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

Done at ,

For the European Parliament

For the Council

The President

The President

Table of contributions, that will be provided by each Member State, to the minimum total number of 1,500 border guards and other relevant staff, according to Art. 19(5)

Austria	34
Belgium	30
Bulgaria	40
Croatia	65
Cyprus	8
Czech Republic	20
Denmark	29
Estonia	18
Finland	30
France	170
Germany	225
Greece	50
Hungary	65
Italy	125
Latvia	30
Lithuania	39
Luxembourg	8
Malta	6
Netherlands	50
Poland	100
Portugal	47
Romania	75
Slovakia	35
Slovenia	35
Spain	111

Sweden	17
Liechtenstein	*
Norway	20
Iceland	2
Switzerland	16
Total	1500

* Liechtenstein will contribute through proportional financial support.

ANNEX

Correlation Table

Regulation 2007/2004/EC	This Regulation
-	Article 1
Article 1	-
Article 1(1)	-
Article 1(3)	-
Article 1a	Article 2
Article 1a(1)	Article 2(1)
-	Article 2(2)
Article 1a(1a)	Article 2(3)
Article 1a(2)	Article 2(4)
Article 1a(3)	Article 2(5)
-	Article 2(6)
Article 1a(5)	-
Article 1a(6)	-
-	Article 2(7)
Article 1a(4)	Article 2(8)
-	Article 2(9)
-	Article 2(10)
-	Article 2(11)

-	Article 2(12)
-	Article 2(13)
-	Article 2(14)
-	Article 3
-	Article 4
-	Article 5
-	Article 6

Article 1(2), first paragraph	Article 6(1)
-	Article 6(2)
Article 2	Article 7
Article 2(1)	Article 7(1)
-	Article 7(1)(a)
-	Article 7(1)(b)
Article 2(1)(a)	-
Article 2(1)(b)	-
Article 2(1)(c)	-
Article 2(1)(d)	-
Article 2(1)(da)	Article 7(1)(c)
Article 2(1)(e)	Article 7(1)(d)
Article 2(1)(ea)	Article 7(1)(e)
-	Article 7(1)(f)
-	Article 7(1)(g)
-	Article 7(1)(h)
-	Article 7(1)(i)
-	Article 7(1)(j)
-	Article 7(1)(k)
-	Article 7(1)(l)
-	Article 7(1)(m)

-	Article 7(1)(n)
Article 2(1)(f)	-
Article 2(1)(g)	-
Article 2(1)(h)	Article 7(1)(o)
Article 2(1)(i)	Article 7(1)(p)

-	Article 7(1)(q)
-	Article 7(1)(r)
Article 2(2), first and second paragraph	Article 7(2), first paragraph
Article 2(2), third paragraph	Article 7(2), second paragraph
-	Article 7(3)
Article 3(1), second paragraph	-
Article 3(1b)	-
-	Article 8
-	Article 9
Article 3(2)	-
Article 3(4)	-
Article 3(5)	-
Article 4	Article 10
Article 4, first paragraph	Article 10(1)
Article 4, second paragraph	Article 10(2)
-	Article 10(3)
Article 4, fourth paragraph	-
Article 4, fifth paragraph	Article 10(4)
-	Article 10(5)
-	Article 10(6)
Article 4, sixth paragraph	Article 10(7)

-	Article 11
-	Article 12
-	Article 12(1)
-	Article 12(2)

Article 4, third paragraph	Article 12(3)
-	Article 12(4)
-	Article 12(5)
-	Article 12(6)
Article 8	Article 13
-	Article 13(1)
Article 8(1)	Article 13(2)
Article 8(2)	-
-	Article 13(2)(a)
-	Article 13(2)(b)
-	Article 13(2)(c)
-	Article 13(2)(d)
Article 8(2)(a)	-
Article 8(2)(b)	Article 13(2)(e)
-	Article 13(2)(f)
-	Article 13(3)
Article 8(2)(c)	-
Article 8(3)	-
Article 3 and Article 8a	Article 14
-	Article 14(1)
Article 8a	Article 14(2)

Article 3(1), first and fourth paragraphs	Article 14(3)
Article 3(1), third paragraph	Article 14(4)
-	Article 14(5)
Article 3a and Article 8e	Article 15
-	Article 15(1)

Article 8e(1)	-
Article 3a(1), first paragraph	Article 15(2)
Article 3a(1), second paragraph	Article 15(3)
Article 3a(1), second paragraph (a) and 8e(1)(a)	Article 15(3)(a)
Article 3a(1), second paragraph (b) and 8e(1)(b)	Article 15(3)(b)
Article 3a(1), second paragraph (c) and 8e(1)(c)	Article 15(3)(c)
Article 3a(1), second paragraph (d) and 8e(1)(d)	Article 15(3)(d)
Article 3a(1), second paragraph (e) and 8e(1)(e)	Article 15(3)(e)
Article 3a(1), second paragraph (f) and 8e(1)(f)	Article 15(3)(f)
Article 3a(1), second paragraph (g) and 8e(1)(g)	Article 15(3)(g)
Article 3a(1), second paragraph (h) and 8e(1)(h)	Article 15(3)(h)
Article 3a(1), second paragraph (i) and 8e(1)(i)	Article 15(3)(i)
Article 3a(1), second paragraph (j) and 8e(1)(j)	Article 15(3)(j)
Article 3a(1), second paragraph (k) and 8e(1)(k)	Article 15(3)(k)

-	Article 15(3)(l)
-	Article 15(3)(m)

Article 3a(2) and Article 8e(2)	Article 15(4)
Article 8d	Article 16
Article 8d(1)	Article 16(1)
Article 8d(2)	Article 16(2)
Article 8d(3)	Article 16(3)
Article 8d(4)	Article 16(4)
-	Article 16(5)
Article 8d(5)	Article 16(6)
Article 8d(6)	Article 16(7)
Article 8d(6)	Article 16(8)
Article 8d(7)	Article 16(9)
Article 8d(8)	Article 16(10)
Article 8d(9)	Article 16(11)
-	Article 17
-	Article 18
Article 3b	Article 19
-	Article 19(1)
Article 3b(1)	Article 19(2)
Article 3b(2)	Article 19(3)
-	Article 19(4)
-	Article 19(5)

Article 8b(1)	Article 19(6)
Article 8b(2)	-
-	Article 19(7)

Article 3b(3), first and second paragraph	Article 19(8), first paragraph
Article 3b(3), third paragraph	Article 19(8), second paragraph
Article 3b(3), third paragraph	Article 19(8), third paragraph
Article 3b(4)	-
Article 3b(6)	-
Article 3b(7)	Article 19(9)
Article 3c	Article 20
Article 3c(1)	Article 20(1)
Article 3c(2)	Article 20(2)
Article 3c(3)	-
	Article 20(3)
-	Article 20(4)
Article 3c(4) and Article 3(1a), third paragraph	Article 20(5)
Articles 8g	Article 21
Article 3a(3)	Article 21(1)
Article 8g(1) and Article 3b(5), first paragraph	Article 21(2)
Article 8g(2) and Article 3b(5), second paragraph	Article 21(3)
Article 8g(2)(a)	-
Article 8g(2)(b)	Article 21(3)(a)

Article 8g(2)(c)	Article 21(3)(b)
Article 8g(2)(d)	Article 21(3)(c)

-	Article 21(3)(d)
-	Article 21(3)(e)
Article 8g(3)	Article 21(4)
Article 8g(4)	-
Article 8f	Article 22
Article 8h	Article 23
Article 3(1a)	Article 24
Article 3(1a), first paragraph	Article 24(1)
Article 3(1a), second paragraph	-
-	Article 24(2)
Article 3(1a), fourth paragraph	Article 24(3)
Article 3(3)	Article 25
-	Article 26
Article 9	Article 27
Article 9(1)	Article 27(1)
Article 9(1c)	Article 27(2)
-	Article 27(3)
-	Article 27(4)
Article 9(1b)	Article 27(5)
Article 9(1)	Article 27(6)
-	Article 28

-	Article 29
-	Article 30

-	Article 31
-	Article 32
-	Article 33
Article 1(2), second paragraph	Article 33(1)
Article 2(1a)	Article 33(2)
Article 2(1a)	Article 33(3)
Article 1(2), second paragraph	Article 33(4)
Article 2a	Article 34
Article 2a, first paragraph	Article 34(1)
Article 9(1a)	Article 34(2)
Article 9(1b)	Article 34(3)
Article 2a, second paragraph	Article 34(4)
Article 5 and Article 8c	Article 35
Article 5, first paragraph and Article 8c	Article 35(1)
Article 5, second paragraph	Article 35(2)
-	Article 35(3)
Article 5, third, fourth and fifth paragraph	Article 35(4)
Article 5, sixth paragraph	Article 35(5)
Article 5, seventh paragraph	Article 35(6)
Article 5, eight paragraph	Article 35(7)
Article 6	Article 36

Article 6	Article 36(1)
-	Article 36(2)

-	Article 36(3)
-	Article 36(4)
Article 7	Article 37
Article 7(1), first paragraph	Article 37(1)
Article 7(1), first paragraph	Article 37(2)
Article 7(1), first paragraph	Article 37(3)
Article 7(1), second paragraph	Article 37(4)
Article 7(1), third paragraph	Article 37(5)
Article 7	Article 38
Article 7(2)	Article 38(1)
Article 7(5), third paragraph	Article 38(2), first paragraph
Article 7(5), fourth paragraph	Article 38(2), second paragraph
Article 7(2)	Article 38(3)
Article 7(3)	Article 38(4)
Article 7(5), second paragraph	Article 38(5)
Article 7(6)	Article 38(6)
Article 7(7)	Article 38(7)
-	Article 38(8)
Article 7(4)	Article 38(9)
Article 7(5), first paragraph	Article 38(10)
Article 10	Article 39

Article 10(1)	Article 39(1)
Article 10(2)	Article 39(2)
Article 10(3)	Article 39(3)
Article 10(4)	Article 39(4)
Article 10(5)	Article 39(5)
Article 10(6)	Article 39(6)
Article 10(7)	Article 39(7)
Article 10(8)	Article 39(8), first paragraph
Article 10(9)	Article 39(8), second paragraph
Article 10(10)	Article 39(9)
Article 10a	Article 40
Article 10a(1)	Article 40(1)
Article 10a(1)(a)	Article 40(1)(a)
Article 10a(1)(b)	Article 40(1)(b)
Article 10a(1)(c)	Article 40(1)(c)
-	Article 40(1)(d)

Article 10a(2)	Article 40(2)
Article 10b	Article 41
Article 10c	Article 42
Article 11	Article 43
Article 11, first paragraph	Article 43(1)
Article 11, second paragraph	Article 43(2)
Article 11a	Article 44
Article 11a, first paragraph	Article 44(1)
Article 11a, second paragraph	Article 44(2)
Article 11a, second paragraph	Article 44(3)
-	Article 44(4)
-	Article 45
Article 11c	Article 46
Article 11c(1)	-
Article 11c(2)	Article 46(1)
Article 11c(2)	Article 46(1)(a)
-	Article 46(1)(b)
-	Article 46(1)(c)
Article 11c(3)	Article 46(2)
Article 11c(3)(a)	Article 46(2)(a)
-	Article 46(2)(b)

Article 11c(3)(b)	Article 46(2)(c)
Article 11c(4)	Article 46(3)
Article 11c(5)	-
Article 11c(6)	-
Article 11c(7)	-
Article 11b	Article 47
Article 11b(1)	Article 47(1)
Article 11b(2)	Article 47(2)
Article 11b(3)	Article 47(3)
Article 11b(4)	Article 47(4)
Article 11b(5)	-
Article 11ca	Article 48
Article 11d	Article 49
Article 11d(1)	Article 49(1)
Article 11d(2)	Article 49(2)
Article 12	Article 50
Article 13	Article 51
Article 13, first paragraph	Article 51(1)
Article 13, first paragraph	Article 51(2)
-	Article 51(3)
Article 13, second paragraph	Article 51(4)

Article 13, third paragraph	Article 51(5)
-	Article 52

Article 14	Article 53
Article 14(1)	Article 53(1)
Article 14(2)	Article 53(2)
-	Article 53(3)
Article 9(2)	Article 53(4)
Article 14(6)	Article 53(5)
-	Article 53(6)
Article 14(5)	Article 53(7)
Article 14(7)	Article 53(8)
Article 14(8)	Article 53(9)
-	Article 54
Article 14(3)	Article 54(1)
Article 14(3)	Article 54(2)
Article 14(4)	Article 54(3)
-	Article 54(4)
Article 15	Article 55
Article 15, first paragraph	Article 55(1)
Article 15, second paragraph	Article 55(2)
Article 15, third paragraph	Article 55(3)
Article 15, fourth paragraph	Article 55(4)
Article 15, fifth paragraph	Article 55(5)

Article 15a	Article 56
Article 15a	Article 56(1)
Article 15a	Article 56(2)
Article 15a	Article 56(3)
Article 16	-
Article 17	Article 57
Article 17(1)	Article 57(1)
Article 17(2)	-
Article 17(3)	Article 57(2)
Article 17(4)	Article 57(3)
Article 17(5)	Article 57(4)
Article 18	Article 58
Article 19	Article 59
-	Article 60
Article 20	Article 61
Article 20(1)	-
Article 20(2)	Article 61(1)
Article 20(2)(a)	Article 61(1)(a)
-	Article 61(1)(b)

-	Article 61(1)(c)
Article 20(2)(b)	Article 61(1)(d)
Article 20(2)(c)	Article 61(1)(e)
Article 20(2)(d)	Article 61(1)(f)
Article 20(2)(e)	Article 61(1)(g)
Article 20(2)(f)	Article 61(1)(h)
Article 20(2)(g)	Article 61(1)(i)
Article 20(2)(h)	Article 61(1)(j)
Article 20(2)(i)	-
-	Article 61(1)(k)
-	Article 61(1)(l)
-	Article 61(1)(m)
-	Article 61(1)(n)
-	Article 61(1)(o)
-	Article 61(1)(p)
-	Article 61(1)(q)
Article 20(3)	Article 61(2)
Article 20(4)	Article 61(3)
Article 20(5)	Article 61(4)
Article 20(6)	Article 61(5)
Article 20(7)	Article 61(6)

-	Article 61(7)
Article 21	Article 62
-	Article 63

Article 22	Article 64
Article 23	Article 65
Article 24	Article 66
Article 24(1)	Article 66(1)
Article 24(2)	Article 66(2)
Article 24(3)	Article 66(3)
-	Article 66(4)
Article 25	Article 67
Article 25(1)	Article 67(1)
Article 25(2)	Article 67(2)
Article 25(3)	Article 67(3)
Article 25(3)(a)	Article 67(3)(a)
Article 25(3)(b)	Article 67(3)(b)
Article 25(3)(c)	Article 67(3)(c)
Article 25(3)(d)	-
-	Article 67(3)(d)
Article 25(3)(e)	Article 67(3)(e)
Article 25(3)(f)	Article 67(3)(f)
-	Article 67(3)(g)

Article 25(3)(g)	Article 67(3)(h)
-	Article 67(3)(i)
-	Article 67(3)(j)
-	Article 67(3)(k)
-	Article 67(3)(l)
Article 25(4)	Article 67(4)
-	Article 67(5)
Article 26	Article 68
Article 26(1)	Article 68(1)
Article 26(2)	Article 68(2)
Article 26(3)	Article 68(3)
Article 26(4)	Article 68(4)
Article 26(5)	Article 68(5)
-	Article 68(6)
-	Article 68(7)
-	Article 69
-	Article 70
Article 26a(1)	-
Article 26a(2), first paragraph	Article 70(1)
Article 26a(2), first paragraph	Article 70(2)
Article 26a(2), second paragraph	Article 70(3)

Article 26a(2), third paragraph	Article 70(4)
Article 26a(4)	Article 70(5)
-	Article 71
Article 26a(3)	Article 71(1)
Article 26a(3)	Article 71(2)
Article 26a(4)	Article 71(3)
-	Article 72

Article 27	Article 73
Article 28	Article 74
Article 29	Article 75
Article 29(1)	Article 75(1)
Article 29(1)	Article 75(1)(a)
Article 29(1)	Article 75(1)(b)
-	Article 75(1)(c)
Article 29(1)	Article 75(1)(d)
Article 29(1)	Article 75(1)(e)
Article 29(2)	Article 75(2)
Article 29(3)	Article 75(3)
Article 29(4)	Article 75(4)
Article 29(5)	Article 75(5)
-	Article 75(6)
Article 29(6)	Article 75(7)
Article 29(7)	Article 75(8)
Article 29(8)	Article 75(9)
Article 29(9)	Article 75(10)
Article 29(10)	Article 75(11)
Article 29(11), first paragraph	Article 75(12)
Article 29(11), second paragraph	-

-	Article 75(13)
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Article 30	Article 76
Article 30(1)	Article 76(1)
Article 30(2)	Article 76(2)
-	Article 76(3)
Article 30(3)	Article 76(4)
Article 30(4)	Article 76(5)
Article 30(5)	Article 76(6)
Article 30(6)	Article 76(7)
Article 30(7)	Article 76(8)
Article 30(8)	Article 76(9)
-	Article 76(10)
Article 30(9)	Article 76(11)
Article 31	Article 77
Article 31(1) and (2)	Article 77(1)
-	Article 77(2)
Article 31(3)	Article 77(3)
-	Article 77(4)
Article 32	Article 78
-	Article 79
Article 33	Article 80
Article 33(1)	Article 80(1), first paragraph

Article 33(2)	-
Article 33(2a)	-

Article 33(2b)	Article 80(1), second paragraph
-	Article 80(2)
-	Article 80(3)
Article 33(3)	-
-	Article 81
Article 34	Article 82
Article 34, first paragraph	Article 82, first paragraph
-	Article 82, second paragraph
Article 34, second paragraph	-
Article 34, third paragraph	Article 82, third paragraph