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Proposal for a

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

**on the European Border and Coast Guard  
and repealing Council Joint Action n°98/700/JHA, Regulation (EU) n° 1052/2013 of the  
European Parliament and of the Council and Regulation (EU) n° 2016/1624 of the  
European Parliament and of the Council**

*A contribution from the European Commission to the Leaders' meeting in  
Salzburg on 19-20 September 2018*

## EXPLANATORY MEMORANDUM

### 1. CONTEXT OF THE PROPOSAL

#### • Reasons for and objectives of the proposal

The Regulation on the European Border and Coast Guard put in place after the 2015 migration crisis in a record time entered into force on 6 October 2016<sup>1</sup>. Yet, more remains to be done to ensure, as part of a comprehensive approach on migration, the effective control of EU external borders and to significantly step up the effective return of irregular migrants. The European Border and Coast Guard as it exists today brought improvements in this regard. However, it is imperative that it fully responds to the level of ambition and needs of the European Union to effectively protect the external borders and to meet the challenges of the future in the area of migration. The European Border and Coast Guard should stand as a tangible example of European solidarity available for operational deployment where needed and reinforce the protection of the Union's shared external borders.

The Commission has already set out its vision<sup>2</sup> for a strengthened and fully operational European Border and Coast Guard in order to address citizens' concerns regarding security and safety for the Union. For the next Multi-annual Financial Framework 2021-2027, the Commission proposed to create a standing corps of 10,000 border guards and to almost triple funding for migration and border management to €34.9 billion, compared to nearly € 13 billion in the current period, in order to respond in a targeted way to increased migratory, mobility and security challenges. This will allow for a better management of the EU borders by the European Border and Coast Guard and a more effective migration policy.

In addition the Commission proposed to provide financial support for equipment and training of the national component of the European Border and Coast Guard in Member States aiming at allowing them to step up their operational capacity, the reinforcement of existing tools and the development of EU wide information systems for borders, migration management and security. In this regard, on 12 June 2018, the Commission proposed the Asylum and Migration Fund, Border Management Instrument and Internal Security Fund totalling € 20.9 billion.

In its June 2018 conclusions, the European Council confirmed the need for a more effective control of the EU's external borders by further strengthening the supportive role of the European Border and Coast Guard Agency, including the cooperation with third countries, through increased resources and an enhanced mandate. The main principles agreed in the conclusions of the European Council have also been further supported by Member States in

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<sup>1</sup> Regulation (EU) 2016/2024 of the European Parliament and of the Council of 14 September 2016 on the European Border and Coast Guard, OJ L251, 16.9.2016, p 1.

<sup>2</sup> Communication: 'A new, modern Multiannual Financial Framework for a European Union that delivers efficiently on its priorities post-2020' (COM(2018)98).

different fora,<sup>3</sup> emphasising the need for reinforcing the tools of European solidarity, including the, ensuring an effective management of the external borders with a stronger European Border and Coast Guard and establishing a more effective and coherent European return policy on the basis of more solidarity and mutual trust.

Moreover, the European Parliament Resolution of 30 May 2018 on the annual report on the functioning of the Schengen area insisted on the need for a prompt introduction of the fully-fledged European Integrated Border Management (IBM) strategy, as agreed between the institutions, the technical and operational strategy by the European Border and Coast Guard Agency and the Member States' subsequent national strategies. The European Parliament expressed also its concern over inconsistencies in the implementation of the IBM Strategy in the Member States and stressed that the full execution of the IBM Strategy in all Member States is vital for the adequate functioning of the Schengen area.

Responding to these calls and more recently to the one of the **European Council**, the Commission is putting forward a number of changes to the European Border and Coast Guard, in particular by providing the Agency with its own operational arm: a **European Border and Coast Guard standing corps of 10,000 operational staff** with executive powers for all its activities to effectively support Member States on the ground. The European Border and Coast Guard standing corps will not only constitute a quantitative change but it will provide for a qualitative change by guaranteeing a readily available **and reliable solution**. It will ensure that the EU collectively has the necessary capabilities to protect the EU external borders, prevent secondary movements and effectively implement returns of irregular migrants.

With the significant reinforcement also of the technical equipment at its disposal, the acquisition of executive powers by its statutory staff and the further strengthened ability to act in third countries, the European Border and Coast Guard standing corps will be a game changer in terms of quality and effectiveness on how the EU collectively protects its common borders and manages, the migratory flows. By setting new standards and imbuing a European culture within border guards, the European Border and Coast Guard will also become a blueprint on how EU border management should be implemented.

Consequently, the functioning of the European Border and Coast Guard and more importantly the way strategic priorities for the European Integrated Border Management are set out, needs to be adapted. The proposal therefore aims at structuring the political steering of the European Integrated Border Management by establishing a policy cycle of European and national integrated border management strategies. The coordination of the planning processes of European Integrated Border Management will be improved to better prepare border operations, define the reaction to higher impact levels and in particular possible intervention of the standing corps and other capabilities of the Agency in support of Member States. It will also improve the preparation of the capabilities of the European Border and Coast Guard by

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<sup>3</sup> Meseberg declaration of Germany and France "Renewing Europe's promises of security and prosperity", 19 June 2018.

coordinating training and education, the acquisition of equipment in the short and longer term, including research and development.

The proposal will also improve the capability to exchange information and support the Member States in the area of returns. Furthermore, it is being presented together with a review of the Return Directive aiming at assisting Member States to increase the efficiency of returns and achieving a more effective and coherent European return policy. The recast of the Return Directive proposes clearer and more effective procedures for issuing return decisions and processing appeals, to ensure coherence and synergies between the asylum and return procedures, as well as a more effective use of detention to facilitate return. In this context, the proposed changes to the Regulation on the European Border and Coast Guard further expand the scope of operational assistance to be provided by the Agency to the Member States.

These changes also reinforce and strengthen the **cooperation between the Agency and the EU Agency for Asylum** in the deployment of migration management support teams, in particular in hotspots and controlled centres. The Commission addresses the need to ensure synergies between the asylum and return procedures through coordination between the national competent authorities and relevant Union agencies and also increasing the efficiency of the common return policy as a key component of sustainable migration management.

Cooperation with third countries is another key element of European Integrated Border Management. This proposals reinforces the cooperation of the Agency to third countries with the aim to promote European border management and return standards, to exchange information and risk analysis, to facilitate the implementation of returns with a view to increasing their efficiency and to support third countries in the area of border management and migration. This includes the deployment of the European Border and Coast Guard standing corps when such support is required to protect external borders and the effective management of the Union's migration policy.

A fully operational European Border and Coast Guard should also streamline and use all the existing operational tools. The Commission proposes **to encompass the European Border Surveillance System (EUROSUR) in the European Border and Coast Guard proposal**, to improve the functioning of EUROSUR and enlarge its scope to cover most of the components of Integrated Border Management. This means better detecting, anticipating and reacting to crisis situations at EU external borders and in third countries.

The above-mentioned elements will reinforce Integrated Border Management as it will enable the European Border and Coast Guard to act as a genuine border police to ensure the protection of EU external borders, to effectively manage migratory flows and to contribute to guarantee a high level of security within the Union - a key condition to preserve the Schengen area.

#### *Reasons for improving the functioning of the European Border and Coast Guard*

The mandatory Rapid Reaction Pool of 1,500 border guards was one of the novelties of the 2016 Regulation. Despite having been successfully set up, the Pool can only be activated for

rapid border interventions, a very specific type of intervention addressing emergency situations. For operational support to frontline Member States under regular joint operations – which are the most common type – the Agency continues to rely entirely on the voluntary pooling of Member States' human and technical resources.

During the migration crisis, the **Agency's operational needs** to support frontline Member States have **been multiplied by four**: from operations requiring the deployment of 52,359 man/days in 2014 up to 189,705 man/days in 2017. Even if the intensity of the pressure at the external borders has decreased compared to 2015, with significantly less irregular arrivals via the Central and Eastern Mediterranean routes, the Agency's increased operational engagement continues to considerably contribute to these positive results.

However, the operational needs for human and technical resources established by the Agency are often not sufficiently met by the Member States' voluntary pledges.

A **continuous high level of engagement** is needed to ensure a proper and long-lasting protection of the external borders. Given geopolitical developments in some strategic regions of the world as well as global demographic trends, the European Border and Coast Guard Agency will be expected to help more and more EU Member States in dealing with migratory pressure, including through supporting effective returns and cooperation with third countries.

While Member States have largely anticipated this trend and provided the Agency with additional border guards and experts, unfortunately, still most of the Agency's joint operations in the period 2015-2018 have been seriously affected by **persistent gaps**, often rendering the Agency's support partially ineffective, as the Commission has repeatedly outlined<sup>4</sup>. The **2018 annual pledging exercise** between the European Border and Coast Guard Agency and the Member States resulted in only 49% of border guards and 45% of equipment covered compared to the Agency's needs for land borders activities. For sea border operations, while 96 % of border guards were covered, only 60% of technical assets were covered.<sup>5</sup> This permanent weakness of the current pooling mechanism, is affecting the EU capacity to keep our external borders secure, and needs to be remedied as acknowledged on numerous occasions by the JHA Council<sup>6</sup>.

Furthermore, under the current pooling mechanism, Member States tend to pledge their contributions only for **concrete locations and concrete periods**, giving the Agency limited flexibility to quickly redeploy experts and/or technical assets to other operational areas as needed. The Agency also faces **under-pledges for some peak months**, and over-pledging for

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<sup>4</sup> In its five progress reports on the operationalisation of the European Border and Coast Guard adopted in 2017 and in the last the progress reports on the implementation of the European Agenda for Migration.

<sup>5</sup> Currently the Agency's operational activities and the overall level of engagement is collectively decided by the Agency's Management Board via an Annual Work Programme (by December n-1) and the Decision on the Minimum Number of Items of Technical Equipment for operations (by June n-1). While these collective decisions often correspond to the operational needs for the Agency to intervene, these commitments are not anymore upheld during the Annual Bilateral Negotiations with the Agency (Autumn n-1) when the concrete individual contributions are pledged by Member States.

<sup>6</sup> See the outcome of the JHA Council meeting of 27-28 March 2017 focussing on the deployment of resources by the Member States and the outcome of the Council meeting of 4-5 June 2018 considering stepping up support to EU agencies, in particular the European Border and Coast Guard Agency.

low season months. All this is problematic because the Agency cannot redeploy the operational staff according to the identified needs.

The Agency tries to compensate the insufficient contributions from Member States and the lack of flexibility in redeployment by developing and using its own capabilities, in particular by pooling and deploying "**seconded Team Members**"(sTMs) as its own contribution to the operational activities. However, this voluntary and complementary scheme has proven to be largely insufficient to allow the Agency to benefit from its main advantages, namely the long term foreseeability of engagement and flexibility for redeployment. While sTMs could be placed at the disposal of the Agency for one year or more, most of them are seconded only for the minimum period of three months required by the Regulation.

The lessons learned from the Agency's operations show that there is a clear need to have permanent, fully trained staff of the Agency that can be deployed at any time anywhere. They also confirm that there is an inequality in the deployments by Member States, a lack of common training, of sufficient linguistic skills, and of a common operational culture which together hamper cooperation on the ground. Fully trained staff with a same professional culture would bring a real added value.

Finally, likewise the persistent gaps in the pooling of human resources, the Agency regularly faces significant shortages in Member States' contributions for technical equipment. While it appears to be difficult to set up a mandatory pooling mechanism build on the equal participation of all Member States, the only viable solution is the further development of the Agency's own technical capabilities through the acquisition of necessary assets taking into account the ambitious envelop foreseen for that purpose in the Commission's proposal for the next Multiannual Financial Framework. This process will create an additional demand for operational staff to act as crew members to maintain and operate all these technical assets and this need should be reflected in the long term solution.

The role of the Union in supporting Member States in the area of returns needed to be reinforced as a key element to help address the migratory situation faced by EU Member States. As shown by return rates in the EU in recent years, challenges remain with regard to the effective implementation of returns. For 2017, Eurostat statistics show a decrease of the return rate throughout the EU from 45.8% in 2016 to merely 36.6%. Together with the proposed recast of the Return Directive, which proposes clearer and more effective procedures for issuing return decisions and processing appeals, as well as a more effective use of detention to facilitate returns, this proposal is intended to reinforce the overall return policy framework in place.

In view of further scaling up the support the Agency provides to the Member States and developing new activities in the field of return, also in relation to third countries, it is evident that more operational staff will need to be made available to support the efforts of the Agency in this regard, in particular given the significant budget foreseen to cover the return activities by the Agency. Such extended mandate on return should be matched with adequate capabilities and human resources, also taking into account the already growing number of return operations that have been supported operationally by the European Border and Coast

Guard Agency: 192 operations have been organised or coordinated by the Agency in 2018 as of 3<sup>rd</sup> of August, compared to 90 for the same period in 2016 and 194 in 2017<sup>7</sup>.

The experiences of the past two years have proven more than ever the importance of taking actions in third countries, including providing operational and technical support. The Commission has been negotiating on behalf of the Union Status agreements with certain neighbouring countries to enable the Agency to carry out operational deployments to those countries. Negotiations have concluded or are close to conclusion with Western Balkan countries, and these agreements may in the future expand beyond neighbouring countries and without the territorial limitations as long as such support to third countries will contribute to the protection of the EU external borders. Significantly more operational staff from the standing corps will be required for such operational deployments and to support such activities on the ground in third countries including on return.

### Objectives of the European Border and Coast Guard

All the above-mentioned elements demonstrate the vital need for **a permanent and reliable solution** to ensure that the Agency has the necessary capabilities to protect the EU external borders and effectively supporting returns.

The European Border and Coast Guard Regulation adopted in 2016 sets out the principles of European Integrated Border Management and defines the European Border and Coast Guard but it mainly addresses the role of the European Border and Coast Guard Agency. The EUROSUR Regulation adopted in 2013 established a framework for cooperation and information exchange between the Member States and the Agency but this framework is currently limited to the surveillance of sea and land borders. By merging the two Regulations, the proposal combines both the tasks of the Agency and the role that the Member States authorities must play in the functioning of the European Border and Coast Guard.

That is why the Commission proposes to set up **the European Border and Coast Guard standing corps of 10,000 operating staff by 2020** to provide the Agency with its own effective and efficient **operational arm**. This proposal is designed to remedy the current identified shortcomings, to respond to the present needs and ensure the EU's strategic readiness to respond to challenges in the future. In particular, it is essential to ensure that the standing corps will rapidly reach by 2020 its full capacity of 10,000 operational staff, to enable the Agency to respond to the current situation. In this context, the preparatory actions, including all logistical and administrative preparation for recruitments and secondments, should take place as soon as political agreement is reached on the proposal.

The creation of the standing corps needs to be integrated in a well-functioning European Board and Coast Guard where Member States, the Union and the EU agencies, in particular the European Border and Coast Guard Agency, are well coordinated and work towards **common and shared policy objectives**. This coordination will ensure the capacity to **share information and analysis**, to **coordinate reaction capability** and the **capacity to anticipate**

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<sup>7</sup> Data available in *Frontex Application Return*.

crisis situations at external borders in the short, medium and long term and to **jointly develop the necessary reaction capabilities**.

**The size of this European Border and Coast Guard standing corps** largely builds on the current indications for engagement under the existing pooling mechanisms which are, however, with the exception of the Rapid Reaction Pool, of a voluntary nature. In accordance with the Management Board's decision, the overall number of border guards for the Agency's operational activities is 5,000. However, the actual number of European Border and Coast Guard Team members registered in the Agency's OPERA system is more than 7,000. These capabilities are complemented by 1,500 border guards nominated by the Rapid Reaction Pool. In addition, in the area of return, the Agency has currently at its disposal three pools which, in accordance with the decision of Management Board should be composed respectively of 600 return escorts, 50 return specialists and 40 forced return monitors. In this context, the **proposed size of a 10,000 standing corps** intends to allow the Agency, beyond only filling the current gaps, to boost its support to frontline Member States in critical operational areas and to cover more areas in the EU Member States and third countries as well as the significantly scale up returns.

The European Border and Coast Guard standing corps should be composed of three categories of operational staff: 1) staff members employed by the European Border and Coast Guard Agency (Category 1), 2) staff mandatorily seconded to the Agency by the Member States for long duration (Category 2) and 3) staff mandatorily provided by Member States for short-term deployment (Category 3).

The essential feature of this new approach is the inclusion of **the Agency's statutory staff as members of the European Border and Coast Guard standing corps** having all the necessary powers to carry out border control and return tasks, including the tasks requiring executive powers. Article 77(2) (d) of the Treaty on the Functioning of the European Union (TFEU) provides that the Union shall adopt any measure necessary to the gradual establishment of an integrated management system for external borders. This provides the legal basis to confer powers of law enforcement to the agents acting on behalf of the Union when conducting the tasks related to the introduction of an integrated management system for external borders. However, such powers and tasks should be clearly defined to match the objective of the establishment of an integrated management system for external borders. Therefore, the list of such tasks is part of the proposal. The Agency's staff under Category 1 will be a new type of EU staff within the Agency on which executive powers are conferred, including the use of force, when acting as team members deployed from the European Border and Coast Guard standing corps. The Commission considers this arrangement as a core element of its revised proposal which will have a significant impact in reinforcing the mandate of the Agency so as to guarantee effective control of the Union's external borders.

The second key element of the European Border and Coast Guard standing corps is **the mandatory nature of Member States' short and long term contributions** to the European Border and Coast Guard standing corps, which is the only solution guaranteeing the availability of necessary contributions for the Agency's activities in the spirit of solidarity and responsibility for the well-functioning of the Schengen area. The individual contributions of



Member States have been established based on the distribution key agreed during the negotiations in 2016 for the Rapid Reaction Pool and set out in Annex I to Regulation (EU) 2016/1624.

This mandatory contribution may be a real challenge for Member States in cases where their national capacities are overstretched by national duties. That is why the proposal provides for a **financial support system** to support and secure the long term development of human resources by enabling the Member States to hire and train additional staff to provide the necessary flexibility to comply with the mandatory pooling established under the European and Border Guard standing corps while keeping sufficient own national capacities.

The **modular composition of the European Border and Coast Guard standing corps** with three categories of operational staff will provide the flexibility to modulate the Agency's engagement according to the operational needs. While the Agency's statutory operational staff (Category 1) will be always the main building block for the deployments from the standing corps, the engagement of operational staff under category 2 and especially under category 3 could be adapted within the existing mechanisms.

Finally, the European Border and Coast Guard standing corps and its operational staff provide an **integrated solution** addressing the whole spectrum of the Agency's deployments: border management teams, return teams as well as migration management support teams having mixed compositions. This is why the proposal is integrating all the existing pooling mechanisms: current annual pledging mechanism for activities at the external borders, the mandatory Rapid Reaction Pool for the rapid border interventions, two pools for return specialists and return escorts. By way of exception, due to the specificity of its tasks and expertise and the need for independence while carrying out monitoring functions, the pool of forced return monitors should remain as a separate arrangement.

The proposal aims at **structuring the political steering** of the European Integrated Border Management by establishing a policy cycle of European and national integrated border management strategies.

The proposal will **reinforce the early warning mechanisms** of the European Border and Coast Guard to increase the reactivity of the response when confronted to crisis but also to better address situations where the functioning of the Schengen area could be at risk.

Anticipation will be a key element of these processes. The proposal aims at improving the coordination **of the planning processes** of European Integrated Border Management to better prepare border operations, define the reaction to higher impact levels and in particular possible intervention of the standing corps and other capabilities of the Agency in support of Member States. It will also improve the preparation of the capabilities of the European Border and Coast Guard by coordinating training and education, the acquisition of equipment in the short and longer term, including research and development.

The proposal will also improve the capability to exchange information and support the Member States in the area of **returns**. In order to better assist the Member States, with this proposal the tasks of the the Agency are broadened to include technical and operational assistance in the implementation of return procedures, including the preparation of return

decisions and other pre-return activities, as well as assistance in developing and operating return management systems and information exchange systems.

The proposal will **clarify** the respective **role of the Member States and of the Agency** in the **functioning of the European Border and Coast Guard**, including cooperation with third parties and third countries. In the area of return, the Agency will be able to provide assistance to return activities of third countries, including through the organisation of mixed return operations with participation of one or more Member States. In particular, the functioning of EUROSUR will be further improved, by increasing the quality of the data exchanged, the security and the reactivity of the systems. In order to better support the different components of Integrated Border Management, the scope EUROSUR will evolve from border surveillance to border control including the reporting on secondary movements and air borders. EUROSUR will be used for border operations and integrated planning. EUROSUR will also improve operational cooperation and information exchange with third Countries and third parties.

- **Consistency with existing policy provisions in the policy area**

This proposal complements the Commission's proposals of 12 June 2018 to establish the Integrated Border Management Fund and the Asylum and Migration Fund under the next Multiannual Financial Framework in view of reinforcing the funding for the national components of the European Border and Coast Guard. All these Commission proposals aim to jointly ensure a fully integrated EU border-management system implemented by a strong and fully operational European Border and Coast Guard composed of the European Border and Coast Guard Agency and the national authorities responsible in Member States for the management of borders and returns.

In order to allow for the effective deployments from the European Border and Coast Guard standing corps as of 1 January 2020, certain decisions and implementing measures should be taken and put in place as soon as possible. In particular, by way of derogation from the normal deadline set in the Regulation, the decision of the Management Board on the profiles of the Agency standing corps should be adopted within 6 weeks of the entry into force of the Regulation and the nominations of operational staff to the European Border and Coast Guard standing corps by Member States within 12 weeks of the entry into force of the Regulation.

At the same time, in order to ensure the continuity of the support for operational activities organised by the Agency, all the deployments until 31 December 2019 should be planned and implemented, including under the Rapid Reaction Pool, in accordance with Articles 20, 30 and 31 of Regulation (EU) 2016/1624 and in accordance with the annual bilateral negotiations carried out in 2018. These provisions should be only repealed with effect from 1 January 2020.

This proposal builds on the existing border management policy and toolbox, in particular the European Border and Coast Guard established by Regulation (EU) No 2016/1624. Over the past two years, the operationalisation of the European Border and Coast Guard has delivered the first cycles of vulnerability assessments and setting up the rapid reaction pools to respond to emergency situations. Through the European Border and Coast Guard standing corps of 10,000 operational staff the capabilities of the Agency, and therefore of the Union, will be

further expanded to respond effectively to present or future threats and challenges at the external borders by proactively reinforcing, assessing, and coordinating the actions of Member States at the external borders and with third countries as well as to step up returns.

Through the integration of the European Border Surveillance System (Eurosur) in the legislative instrument establishing the European Border and Coast Guard, the proposal further fosters a spirit of cooperation, information exchange and the coordination of efforts between the Member States and the European Border and Coast Guard Agency, as well as among national authorities and Union Agencies, with concrete and binding commitments. It also builds upon Regulation (EU) No 656/2014<sup>8</sup> establishing rules for the surveillance of the external sea borders in the context of operational cooperation coordinated by Frontex.

The proposal clarifies the relation between vulnerability assessments carried out by the Agency and the Schengen evaluation mechanism established by Regulation (EU) No 1053/2013<sup>9</sup> in view of maximising synergies between these two mechanisms that are essential for European quality control on the functioning of the Schengen area.

This proposal builds upon and further develops those existing policy provisions and brings them together in the European Border and Coast Guard, thus establishing an integrated management system for external borders at Union level as provided for in Article 77(2)(d) of the Treaty on the Functioning of the European Union.

- **Consistency with other Union policies**

This proposal is consistent with the comprehensive long-term policy on better migration management as set out by the Commission in the European Agenda on Migration, which developed President Juncker's Political Guidelines into a set of coherent and mutually reinforcing initiatives based on four pillars. Those pillars consist of reducing the incentive for irregular migration, securing external borders and saving lives, a strong asylum policy and a new policy on legal migration. This proposal further implements the European Agenda on Migration, more specifically as regards the objective of securing external borders as the European Border and Coast Guard will implement European Integrated Border Management. Moreover, it responds to the request of the European Council for strengthening further the supportive role of the European Border and Coast Guard Agency, including in the cooperation with third countries, through increased resources and an enhanced mandate, with a view to ensure the effective control of the EU's external borders and significantly stepping up the effective return of irregular migrants.

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<sup>8</sup> 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 Member States of the European Union (OJ L 189, 27.6.2014, p. 93).

<sup>9</sup> Council Regulation (EU) No 1053/2013 of 7 October 2013 establishing an evaluation and monitoring mechanism to verify the application of the Schengen *acquis* and repealing the Decision of the Executive Committee of 16 September 1998 setting up a Standing Committee on the evaluation and implementation of Schengen (OJ L 295, 6.11.2013, p. 27).

## **2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY**

### **• Legal basis**

This legislative proposal is based on Article 77(2)(b) and (d) and Article 79(2)(c) of the Treaty on the Functioning of the European Union (TFEU).

Article 77(1)(b) and (d) provides that the Union shall develop a policy with a view to carrying out checks on persons and efficient monitoring of the crossing of external borders, and the gradual introduction of an integrated management system for external borders. For those purposes, under Article 77(2)(b) and (d), the European Parliament and the Council acting in accordance with the ordinary legislative procedure, shall adopt measures concerning the checks to which persons crossing external borders are subject, and any measure necessary for the gradual establishment of an integrated management system for external borders.

Article 79(2)(c) authorises the European Parliament and the Council to adopt measures in the area of irregular immigration and unauthorised residence, including removal and repatriation of persons residing without authorisation.

### **• Subsidiarity**

The objective of this proposal is to ensure a European Integrated Border Management of the EU's external borders, with a view to managing migration effectively and ensuring a high level of security within the Union, while safeguarding the free movement of persons therein. In an area without internal borders, irregular migration through the external borders of one Member State affects all other Member States within the Schengen area. An area without internal borders is only sustainable if the external borders are effectively secured and protected.

Since the control of the Union's external borders is a common and shared interest which must be carried out in accordance with high and uniform Union standards, the objectives of this proposal cannot be sufficiently achieved by the Member States, and can be better accomplished at the level of the Union, the Union may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union.

### **• Proportionality**

The proposal is intended to respond to the new challenges and political realities faced by the Union, both as regards migration management and internal security. It reinforces a tool box of capabilities available to the European Border and Coast Guard, notably by setting up the European Border and Coast Guard standing corps of 10 000 operational staff to comprehensively deal with challenges in the management of EU borders and return. It ensures that rules on integrated border management are fully and correctly implemented by Member States in line with one coherent multiannual strategic policy cycle, that appropriate action is taken to prevent crisis situations and to respond effectively at an early stage at the external borders if such a situation arises and it is only when the situation becomes more critical, that urgent action is taken at Union level for direct intervention on the ground. In view of its objectives and in accordance with the principle of proportionality, as set out in Article 5 of the Treaty on European Union, this Regulation does not go beyond what is necessary in order to achieve those objectives.

- **Choice of the instrument**

As explained in Chapter 1, the creation of European Border and Coast Guard standing corps and setting of the necessary accompanying measures constitute new essential elements significantly impacting on the functioning of the European Border and Coast Guard. Given the importance of these changes, it is necessary to amend the Regulation (EU) 2016/1624 on the European Border and Coast Guard. It is also an opportunity to better integrate the amended EUROSUR in the European Border and Coast Guard by encompassing the amended elements of Regulation (EU) n° 1052/2013 establishing the European Border Surveillance System (Eurosur) into the new Regulation as concluded in the evaluation of the EUROSUR Regulation.

Indeed, only a regulation can provide for the necessary degree of uniformity required for ensuring the integrated management of the external borders and to ensure the effective role of the Agency in returns. Moreover, having regard to the fact that the European Border and Coast Guard and EUROSUR were established by means of a Regulation, the same legal instrument is also appropriate for this proposal amending and merging the two Regulations.

- **Fundamental rights**

This proposal respects fundamental rights and observes the principles recognised, in particular, by the Charter of Fundamental Rights of the European Union. All activities of the European Border and Coast Guard, as regards both the European Border and Coast Guard Agency and the Member States' authorities competent for management of borders and return shall be carried out in full respect of fundamental rights as enshrined in the Charter, including the right to asylum (Article 18 of the Charter), the protection from *refoulement* (Article 19 of the Charter), the right to respect for private and family life (Article 7 of the Charter), the right to protection of personal data (Article 8 of the Charter) and the right to an effective remedy (Article 47 of the Charter). The proposal fully takes into account the rights of the child and the special needs of persons in a vulnerable situation.

The proposal is thus in line with Articles 2 and 6 of the Treaty on European Union and with the Charter of Fundamental Rights of the European Union.

### **3. BUDGETARY IMPLICATIONS**

The EU contribution for the European Border and Coast Guard Agency already forms part of the Union's budget as based on the Legislative Financial Statement accompanying the Commission proposal for the Regulation establishing the European Border and Coast Guard. In addition, some additional resources were identified for the Agency in the Legal Financial Statement accompanying the Commission's proposals for ETIAS and the Interoperability package.

To set up the European Border and Coast Guard standing corps and acquiring the Agency's own equipment, as well as to adequately address other new or upgraded tasks foreseen in this proposal, an amount of EUR 577,5 million needs to be added to the existing EU contribution for 2019 and 2020 under the current Multiannual Financial Framework, which may require the use of special instruments foreseen in the MFF Regulation. For the period of 2021-2027, a

total EU contribution of EUR 11 270 million will be needed to cover the upgraded tasks and functions of the Agency, largely related to the implementation of the European Border and Coast standing corps and the acquisition of the Agency's own equipment. These amounts will be complemented by the corresponding contribution of the Schengen associated countries.

The EU contribution requested for the 2021-2027 period can be financed within the ceilings set out in the MFF proposal of 2 May 2018.

As for the human resources, the Agency was expected to reach 1,000 staff members by 2020. In order to establish the European Border and Coast Guard standing corps, the Agency will be allocated with additional posts: starting with 750 posts in 2019 and reaching 3,000 posts by 2025. These additional posts will be equally split between temporary agents and contractual agents. The new posts will be largely used to recruit and train operational staff members under Category 1 of the European Border and Coast Guard standing corps. However, this category will also include staff members foreseen for setting up and operating the ETIAS's Central unit.

Moreover, within the above-mentioned figure of 3,000 posts, the Agency could use up to 4% of the total size of the standing corps to recruit staff members to support the establishment of the European Border and Coast Guard standing corps (recruitment, daily management, operational planning etc), staffing of operational antennas, the acquisition of the Agency's equipment, other new tasks related to the functioning of the European Border and Coast Guard, including EUROSUR, the reinforced mandate for returns and the takeover of FADO.

In addition to the Agency's budget, within the Funds in the area of migration and border management, there will be support for the implementation of the expanded EUROSUR on the side of Member States, via the existing resources from the Internal Security Fund Border and Visa in 2020 (EUR 52,5 million) and the future Integrated Border Management Fund (EUR 647,5 million) in the period of 2021-2027, 10% of these resources being allocated to EUROSUR. The relevant actions will be implemented in shared or direct management.

The revised Framework Financial Regulation for decentralised agencies, including reinforced rules on governance of these agencies in the area of fraud, irregularities, conflict of interest rules and internal control will supplement the rules contained in this proposal.

#### **4. PREPARATORY PROCESS AND STAKEHOLDER CONSULTATIONS**

In 2017 the Commission addressed, five progress reports to the European Council, the European Parliament and the Council, giving record to the progress achieved on the European Border and Coast Guard operationalisation as well as analysing the shortcomings encountered. These reports were often followed by discussions in the Council and presentations in the relevant committees of the European Parliament.

In its February Communication<sup>10</sup>, the Commission has set priorities and several options for the future Multi-annual financial framework of the Union with a strong and fully operational European Border and Coast Guard at the core of a fully integrated European integrated border

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<sup>10</sup> Commission Communication 'A new, modern Multiannual Financial Framework for a European Union that delivers efficiently on its priorities post-2020', COM(2018) 98 final.

management system. In its Communication of 2 May 2018<sup>11</sup> accompanying the proposal for the next Multiannual Financial Framework, the Commission reiterated its commitment to work towards this objective and proposed to create a standing corps of around 10,000 border guards.

On 5 July, the Agency's Management Board held an informal workshop to discuss the future legal framework of the Agency and a written record of the meeting together with separate positions of 8 Member States has been submitted for the attention of the Commission. Moreover, the new mandate of the Agency was discussed on 9 July at the meeting of the Strategic Committee on Immigration, Frontiers and Asylum, where the Member States' representatives expressed their preliminary views on the ideas contained in the MFF proposal. As regards EUROSUR, in line with Article 22(3) of Regulation No 1052/2013, the Commission carried out an overall evaluation of EUROSUR. The report from this evaluation is annexed to the proposal. The evaluation report concluded that the EUROSUR framework has met its objectives but that the functioning of EUROSUR could be improved by evolving from a technical information system into a governance framework for information exchange and cooperation. Follow up consultations have taken place with the Expert Group on EUROSUR, which was set up and managed by the Agency to support the implementation of EUROSUR, and with a dedicated expert group on EUROSUR, established by the Commission to discuss and follow the evaluation process and discuss possible amendments to the existing Regulation. On 6<sup>th</sup> and 7<sup>th</sup> February 2018, the Commission set up a dedicated workshop to discuss the technological and industrial aspects of EUROSUR with industry representatives, researchers and governmental experts from Member States, EU institutions and Agencies. In order to assess the cost/benefit of the various changes envisaged by the proposal, the Commission has procured a study to assess the impacts of various options related to possible evolutions of the European Border Surveillance System (Eurosur)

Taking into account the call of the European Council of 28 June 2018 for further strengthening the supportive role of the Agency through an enhanced mandate, and the necessity to address this call in an appropriate timeline, it was decided not to carry out an Impact Assessment.

## 5. DETAILED EXPLANATION OF THE SPECIFIC PROVISIONS OF THE PROPOSAL

The proposal (Art.8) introduces a **multiannual strategic policy cycle for European Integrated Border Management** as a way to ensure the effective implementation of the European Integrated Border Management by the European Border and Coast Guard. The multiannual cycle will establish an interoperable, unified and continuous process to provide strategic guidelines to all the relevant actors at the level of the Union and in the Member States in the area of border management and returns to implement the European Integrated Border Management in a coherent, integrated and methodological manner. The cycle will start

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<sup>11</sup> Commission Communication 'A Modern Budget for a Union that Protects, Empowers and Defends The Multiannual Financial Framework for 2021-2027', COM(2018) 321.

with political steering for the European Integrated Border Management provided in the form of a Commission delegated act, which will then be implemented through the technical and operational strategy prepared by the European Border and Coast Guard Agency and national strategies prepared by the Member States. An evaluation assessing the implementation of these three stages will be completed in view of the preparation of the next cycle.

The main elements of the proposal to set up the **European Border and Coast Guard standing corps**, accompanied by improvements of other **key capabilities** (see in particular Article 5 (2), 55 to 60, 63 and 64).

- The essential elements related to the European Border and Coast Guard standing corps are explained in Chapter 1 above, especially as regards its composition, size, scope of activities, mandatory nature and the application of executive powers.
- To accommodate the composite nature of the standing corps, the proposal introduces the concept of operational staff of the **European Border and Coast Guard standing corps** as being border guards, return escorts, return specialists and other relevant staff. They will be deployable in the framework of three types of teams: border management, return and migration management support.
- The **individual contributions of Member States to the European Border and Coast Guard standing corps** are defined in accordance with Annexes IV and V. The breakdown of these individual contributions is based on the distribution key agreed for the Rapid Reaction Pool as set out in Annex I to the current European Border and Coast Guard Regulation.
- The functioning of the European Border and Coast Guard standing corps and its composition shall be subject to a **midterm review** carried out by the Commission. Based on the midterm review, the Commission may consider amending the relevant annexes.
- In order to ensure a common professional culture, **specific training and a uniform** should be provided to the teams deployed from the European Border and Coast Guard standing corps.
- In view of deployment of teams from the European Border and Coast Guard standing corps in the territory of third countries, the Agency should develop the **capabilities for their own command and control structures**.
- To overcome the persistent gaps in the voluntary pooling of technical equipment from Member States, in particular as regards large-scale assets, the Agency should have **its own equipment** to be deployed in joint operations or rapid border interventions or any other operational activities. While the Agency has been legally able to acquire or lease its own technical equipment since 2011, this possibility was significantly hindered by the lack of budgetary resources. With the adoption of the 2016 Regulation, the Agency was provided with a dedicated budget of EUR 40 million to acquire small and medium size equipment and the Agency has made progress to use these opportunities. As a



natural consequence of these developments as well as to match the level of ambition underlying the establishment of the European Border and Coast Guard standing corps, the Commission earmarked a significant envelope under the 2021-2027 multiannual financial framework to allow **the Agency to acquire, maintain and operate the necessary air, sea and land assets** corresponding to the operational needs.

- While the acquisition of the necessary assets could be a lengthy process, especially for large assets, the Agency's own equipment should ultimately become the backbone of the operational deployments with additional contributions of Member States to be called upon in exceptional circumstances. The Agency's equipment should be largely operated by the Agency's technical crews part of the European Border and Coast Guard standing corps. In order to ensure the effective use of the proposed financial resources for the Agency's own equipment, the process shall be based on a **multiannual strategy** decided as early as possible by the management board and accompanied by an action plan.
- To facilitate the work of the Agency in the Member States which are hosting its operational activities at the external borders and those related to returns, the Agency will have the possibility to establish **antenna offices** situated in those Member States for the period for which its operational activities are on-going. The role of these antenna offices will be to serve as an interface between the Agency and the host Member States, to ensure coordination, communication and logistical support and to guarantee the smooth running of all processes related to those operational activities. They will be set up in locations situated in geographical proximity to the areas where operational activities takes place.

The proposal (Articles 9 and 67) establishes **a framework for integrated planning of the European Border and Coast Guard**. This planning will integrate the various planning processes of the Border Guards and Return authorities of Member States and of the Agency in the short, medium and long term. Integrated planning will follow the multiannual strategic policy cycle for the European Integrated Border Management.

- The proposal establishes a standard methodology for **planning against scenarios** established by the Agency. These scenarios based on risk analysis will take into account the geopolitical context and will be approved by the Agency's Management Board.
- The proposal introduces **capability development planning** for the European Border and Coast Guard. The capability development planning established by this proposal is a mechanism aiming at confronting and converging the long term plans of Member States and of the Agency with a view to identify opportunities in the areas of training and education, technical and operational standardisation; joint procurement of equipment, and Research and Development. The Agency will acquire new capabilities to support Member

States' individual needs; it will also play a key role in coordinating capability development for the whole European Border and Coast Guard.

- The capability development planning processes will result in a **capability roadmap for the European Border and Coast Guard**, which will be approved by the Agency's Management Board and annexed to the technical and operational integrated border management strategy. This capability roadmap will give strategic orientations to the capability development of the European Border and Coast Guard. The capability roadmap will lead to the establishment of procurement plans and technology roadmaps. These procurement plans will help Member States and the Agency for the acquisition and leasing of technical equipment<sup>12</sup> and the technology roadmaps will support the Agency in identifying key research themes<sup>13</sup> and will be taken into account for the programming of the EU instruments supporting both operational and research activities in the area of Integrated Border Management and Returns.
- The proposal strengthens existing requirements for **contingency planning** at the level of Member States as part of the overall process of integrated planning. Contingency planning shall address all the necessary measures and resources to allow for the possible reinforcement of capabilities including logistics and support when confronted with higher impact levels at external borders including the capacities to support the deployment of additional capabilities coordinated by the European Border and Coast Guard Agency. These plans should continue to be subject to the quality control mechanism as part of the Vulnerability assessment mechanism.
- In the short term, **operational planning** will be coordinated between the Member States and with the Agency in the framework of EUROSUR in line with the planning processes of Joint Border operations established by the Agency.<sup>14</sup>

The proposal ( Article 18 and following) **incorporates EUROSUR in the European Border and Coast Guard Regulation** as a necessary element of the functioning of the European Border and Coast Guard.

- EUROSUR evolves into a governance framework for the exchange of information and for the cooperation between the national authorities of Member States responsible for border management and the Agency building upon the various information systems used by the Member States and the Agency and enlarging and **expanding the role and competences of the national coordination centres**.
- The proposal **simplifies the existing elements of the current EUROSUR Regulation and improves the reactivity of EUROSUR**. Some of the

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<sup>12</sup> In line with Article 38 of the European Border and Coast Guard Regulation.

<sup>13</sup> In line with Article 37 of European Border and Coast Guard Regulation.

<sup>14</sup> As described in Article 16 of the European Border and Coast Guard Regulation.

technical parts of the current EUROSUR Regulation will be moved into implementing acts to provide more clarity in the technical implementation, to allow more flexibility and possible operational updates, while ensuring their binding character.

The proposal **enlarges the current scope of EUROSUR** from land and sea border surveillance **to border control** (by adding checks at border crossing points and air border surveillance which were currently reported on a voluntary basis by Member States) in order to provide an exhaustive situational awareness at external borders and expand the range of reaction capacities. The Agency will develop new types of inter-agency cooperation with the authorities of the aviation sector to better detect and respond to the new threats induced by aircrafts and drones.

The proposal **reinforces the situational awareness, risk analysis, prevention and responsiveness** of the European Border and Coast Guard in the following aspects:

- In order to **strengthen the risk analysis function** of the European Border and Coast Guard, the various information sources and methodologies, the border sections and impact levels of EUROSUR and those that are used by the Agency and the Member States through the common integrated risk assessment methodology (CIRAM) by the Frontex Risk Assessment Network (FRAN) and of the vulnerability assessments will be aligned (Article 31).
- Building on EUROSUR, the proposal **improves the situational awareness** of the European Border and Coast Guard (Article 29). It merges the current common pre-frontier intelligence picture, which gathers information on the pre-frontier area, with the European situational picture, which corresponds in the current Regulation to information collected within the Schengen area. Secondary movements are now part of the situational pictures to assess the migratory situation at EU external borders both at strategic and tactical levels. Member States and the Agency will now benefit from and contribute to this information directly in EUROSUR via the National Coordination Centres.
- The mechanism of **EUROSUR fusion services** is formally established (Article 29) to replace the “common application of surveillance tools” referred to in the current EUROSUR Regulation. Through the EUROSUR Fusion Services, the Agency supplies the national coordination centres and itself with relevant information related to external borders. The EUROSUR Fusion Services continue to be delivered through cooperation between the Agency and third parties. The Agency will continue using the earth observation satellite services under the Copernicus space programme to monitor the pre-frontier area but will develop new EUROSUR fusion services with other EU agencies and international partners to match the new scope of EUROSUR. For instance, such interagency cooperation should be set up in the area of air border surveillance between the Agency, the network manager of the European air traffic management network (EUROCONTROL) and the European Aviation Safety Agency (EASA).

- The proposal (Article 30) introduces the requirement of a **strategic risk analysis** for the European Integrated Border Management to be prepared by the European Border and Coast Guard Agency every two years to present some long-term insights and analysis for the upcoming years. This analysis would serve as a starting point for the Commission to launch the multiannual strategic policy cycle for the European Integrated Border Management. The strategic risk analysis will contribute to high-level scenarios on which the integrated planning will rely.
- Given that the vulnerability assessments and the Schengen evaluation mechanism established by Regulation (EU) No 1053/2013 are two complementary mechanisms for guaranteeing the **European quality control on the proper functioning of the Schengen area**, clear arrangements for a regular exchange of information on their results needs to be established between the Commission and the European Border and Coast Guard Agency to maximise the synergies between those mechanisms (Article 34).
- In order to better address crisis situations where, at the level of a border section, the situation is such that the functioning of the Schengen area is put at risk, an additional, fourth “critical” impact level is created in EUROSUR. The “critical” impact level will automatically trigger a response by the standing corps of the EU border and coast guard Agency Article 35, 36 and 42).
- As regards **migration management support teams**, the Commission is proposing new provisions (in Article 41) to ensure coherence with its amended proposal for a Regulation on the European Union Agency for Asylum which is being presented with this proposal. The Commission proposes to broaden the scope for triggering the use of migration management support teams – their deployment is subject to a request from the Member State concerned but it is no longer limited to circumstances of disproportionate migratory challenges. The Commission will be in charge of the coordination on the ground, as already reflected in the current Regulation, as well as the coordination of the requests from Member States and the assessment of needs. This would ensure coherence between the different actions by the relevant Union agencies as well as synergies of resources of the Agencies and the Member States.
- Building on the current provisions, the proposal (Article 42) consolidates the role of the Executive Director **to propose to the Member State concerned concrete operational activities of the Agency** when justified by the results of the vulnerability assessment, risk analysis or when a critical impact is attributed to one or more border sections. In case of the lack of cooperation for such proposed actions, the Commission should be notified in view of assessing and deciding whether further action may be needed in accordance with Article 43 addressing the situation at EU external border requiring urgent action.

The proposal **improves information exchange and cooperation** within the European Border and Coast Guard (see in general Article 12) :

- Implementing acts will further specify the type of information to be provided, in the framework of EUROSUR but also the entities responsible for collecting, processing, archiving and transmitting specific information, the maximum delays for reporting, the data security and data protection principles (see e.g. Article 25).
- The **Agency will monitor in real time** both the technical status of the networks and systems and the quality of the information that is reported by Member States and share it with the users as an essential element of the reliability of the EUROSUR framework (Article 24).
- The **Communication Network** was developed in the framework of the current EUROSUR regulation and is capable of exchanging EU Classified Information between the Member States and the Agency. This Communication Network is now used (Article 14 and 15) for all the information exchanges between the different components of the European Border and Coast Guard and its level of classification is increased from RESTREINT UE/EU RESTRICTED to CONFIDENTIEL UE/EU CONFIDENTIAL to improve information security and confidence among the actors.
- The Agency will develop **technical standards** to improve information exchange while **information assurance** is reinforced via the national Coordination Centres (Article 16).

The proposal improves **the EU response in the area of returns** with regard to the following aspects (see Article 49 and following).

- This proposal further expands the mandate of the Agency to provide **technical and operational assistance to Member States in return procedures**, without prejudice to the latter's responsibility for issuing return decisions, including for the preparation of return decisions, identification of third country nationals and other pre-return and return-related activities of the Member States.
- To further assist Member States, the Agency is also tasked with:
  - developing a reference model for a return case management system prescribing the structure of national return management systems;
  - supporting the development of their national systems or aligning them with the model;
  - setting up a central system and a communication infrastructure with/between national return management systems and the central system for processing all information and data necessary for the Agency to provide technical and operational assistance in accordance with the Regulation.
- **Increased cooperation with third countries:** providing assistance in the return activities of and in third countries, including by deploying the European Border and Coast Guard standing corps in third countries, as well as by

reinforced cooperation with the authorities of third countries on return, including as regards the acquisition of travel documents.

- **Strengthen the mandate of the Agency to process personal data** in connection with its activities in the area of return, as well as in the exchange of information with third countries and international organisations with regard to return activities.

The proposal **improves the external dimension of the European Border and Coast (see Articles 72 to 79):**

- The European Border and Coast Guard will be enabled to act in third countries without limitation to neighbouring third countries, including in the area of return as specified above.
- The proposal **describes under which conditions the Agency will offer technical and operational assistance to third countries.** The Agency's operations could take place at any borders of the third country concerned, where appropriate, with the agreement of the Member State(s) bordering the operational area.
- The proposal improves information exchange with third countries in the framework of EUROSUR via the National Coordination Centres while preserving historical relationships between Member States and third countries., Provisions will detail under which conditions data will be exchanged with, and EUROSUR fusion services could be provided to, third countries' authorities.
- In line with the Commission proposal on the creation of a European network of immigration liaison officers (recast), **the role of the immigration liaison officer** for information exchange and cooperation is acknowledged. In addition to the European network of immigration liaison officers, the links with the national coordination centres and with the Agency are formally established.
- **The role of the Commission with regard to cooperation with third countries is clarified:** the Commission supports the Member States and the Agency in the area of cooperation with third countries by preparing model provisions and verifying if the relevant provisions of the bilateral and multilateral agreements and working arrangements are compliant with the Regulation.

Finally, building on the Council conclusions of 27 March 2017, the Commission proposes to integrate the False and Authentic Documents Online (FADO) system into the European Border and Coast Guard framework. FADO is a European image system designed for exchanging information among Member States on genuine and false documents, and is currently managed by the Council General Secretariat. Such a common and shared Union image system is a very useful tool for fighting document fraud, as it makes detection of false documents easier. Integrating FADO to the European Border and Coast Guard framework will allow the Agency to take over and manage the system. The integration of **FADO** will deliver the following outcomes (Article 80):

- In order to support Member States checking the authenticity of documents at the border, the proposal entrusts the Agency to take over and adapt the **False and Authentic Documents Online (FADO)** system to current and future requirements. The Council Joint Action of 3 December 1998, 98/700/JHA will be repealed in its entirety and replaced by a legal basis in the European Border and Coast Guard Regulation, enabling the Agency to take over the current system. The implementation provisions will be set out by implementing acts. This would ensure the involvement of Member States' experts (via the existing Article 6 committee) and would also allow adapting the system to future needs.
- The **multi-layered structure** of FADO systems should be kept as it is necessary to provide different levels of information on documents to different stakeholders, including the general public. Regarding the **transitional period**, it should be ensured that the current FADO system remains functional until the new system becomes operational and that the existing data are transferred to the new system with the agreement of Member States as owners of the data.

Finally, the proposal also addresses several aspects of the Agency's governance and administrative matters:

- given the establishment of the European Border and Coast Guard standing corps as well as the overall expansion of the Agency's mandate, in particular in the area of returns, to appoint **three deputy executive directors** instead of one as foreseen under the current Regulation (Article 105). All these **three deputy executive directors should be assigned a specific area of responsibility**.
- Because of the fundamental importance of the Agency as part of the European Border and Coast Guard responsible for the integrated management of the external borders, and the role of the Commission with regard to the multiannual strategic policy cycle for European Integrated Border Management (see Article 8), the responsibility of the Commission in the framework of the Agency's governance should be brought in line with **the principles of the common approach on Union decentralised agencies** adopted on 12 July 2012 by the European Parliament, the Council and the Commission (e.g. with regard to the appointment of the deputy executive directors, Article 105).
- The proposal establishes a **Committee** to assist the Commission in preparing a number of implementing acts foreseen in the Regulation. However, as far as FADO is concerned, the existing Article 6 Committee should be used (Article 117).

The proposal repeats the provisions of the current Regulation in relation to Ireland and the United Kingdom.

The Commission considers the above-mentioned changes as essential to guarantee that the European Border and Coast Guard is well-equipped, efficient and fully operational to ensure an effective support to the Member States for the protection of Union external borders.

Proposal for a

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

**on the European Border and Coast Guard  
and repealing Council Joint Action n°98/700/JHA, Regulation (EU) n° 1052/2013 of the  
European Parliament and of the Council and Regulation (EU) n° 2016/1624 of the  
European Parliament and of the Council**

*A contribution from the European Commission to the Leaders' meeting in  
Salzburg on 19-20 September 2018*

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 Article 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 Committee<sup>15</sup>,

Having regard to the opinion of the Committee of the Regions<sup>16</sup>,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) 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. The aim is to manage the crossing of the external borders efficiently and address migratory challenges and potential future threats at those borders, thereby contributing to addressing serious crime with a cross-border dimension and ensuring a high level of internal security within the Union. At the same time, it is necessary to act in full respect for fundamental rights and in a manner that safeguards the free movement of persons within the Union.
- (2) The European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union , was established by

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<sup>15</sup> OJ C , , p. .

<sup>16</sup> OJ C , , p. .



Council Regulation (EC) No 2007/2004<sup>17</sup>. 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, risk analysis, information exchange, relations with third countries and the return of returnees.

- (3) The European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union has been renamed the European Border and Coast Guard Agency (the ‘Agency’) and its tasks have been expanded with full continuity in all its activities and procedures. The key role of the Agency should be to establish a technical and operational strategy as part of the multiannual strategic policy cycle for implementation of European integrated border management, to oversee the effective functioning of border control at the external borders, to carry out risk analysis and vulnerability assessments, to provide increased technical and operational assistance to Member States and third countries through joint operations and rapid border interventions, to ensure the practical execution of measures in a situation requiring urgent action at the external borders, to provide technical and operational assistance in the support of search and rescue operations for persons in distress at sea, to organise, coordinate and conduct return operations and return interventions and provide technical and operational assistance to return activities of third countries.
- (4) Since the beginning of the migratory crisis in 2015, the Commission has taken up important initiatives to strengthen the protection of the Union borders. A proposal for significantly enhancing the mandate of the European Agency for the Management of Operational Cooperation at the External Borders was presented in December 2015 and negotiated in a record time during 2016. The Regulation on the European Border and Coast Guard Agency has entered into force on 6 October 2016.
- (5) However, the Union’s framework in the area of control of external borders, returns and asylum, still needs to be further improved. To that end and to further underpin the current and future envisaged operational efforts, the European Border and Coast Guard should be reformed by giving the European Border and Coast Guard Agency a stronger mandate and, in particular, by providing it with the necessary capabilities in the form of a European Border and Coast Guard standing corps of 10 000 operational staff with executive powers to effectively support Member States on the ground in their efforts to protect the external borders, fight secondary movements and significantly step up the effective return of irregular migrants.
- (6) In its conclusions of 28 June 2018, the European Council called for strengthening further the supportive role of the European Border and Coast Guard Agency, including in the cooperation with third countries, through increased resources and an enhanced mandate, with a view to ensure the effective control of the external borders and significantly stepping up the effective return of irregular migrants.
- (7) 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. That should be

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<sup>17</sup> 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).

accompanied by the proactive management of migration, including the necessary measures in third countries. In view of what has been stated, it is necessary to consolidate the European Border and Coast Guard and to further expand the mandate of the European Border and Coast Guard Agency. The Agency should be constituted principally by a European Border and Coast Guard standing corps consisting of 10,000 operational staff.

- (8) In order to reflect the further qualitative enhancement of its mandate, in particular by providing it with its own operational arm, the European Border and Coast Guard standing corps of 10,000 operational staff, the Agency formerly known as Frontex should from now on be referred to as and operate exclusively under the name "the European Border and Coast Guard (EBCG) Agency". This change should be reflected in all relevant instances, including its visualisation in the external communication materials.
- (9) When implementing European integrated border management, coherence with other policy objectives should be ensured, including the proper functioning of cross-border transport.
- (10) European Integrated Border Management should be implemented as a shared responsibility of the 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, and those responsible for returns. 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 and are responsible for issuing return decisions, the Agency should support the application of Union measures relating to the management of the external borders and returns by reinforcing, assessing and coordinating the actions of Member States which implement those measures.
- (11) To ensure the effective implementation of European Integrated Border Management and increase the efficiency of the common return policy, a European Border and Coast Guard should be established. It should be provided with the requisite financial and human resources and equipment. The European Border and Coast Guard should be composed of 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, as well as authorities responsible for returns. As such it will rely upon the common use of information, capabilities and systems at national level and the response of the Agency at Union level.
- (12) 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 the exchange of information.
- (13) The development of 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 Agency and those institutions should be guaranteed.
- (14) The effective implementation of the European Integrated Border Management by the European Border and Coast Guard should be ensured through a multiannual strategic policy cycle for European Integrated Border Management. The multiannual cycle should set an integrated, unified and continuous process to provide strategic guidelines to all the relevant actors at Union level and in Member States in the area

of border management and returns in order for those actors to implement the European Integrated Border Management in a coherent manner. It shall also address all the relevant interactions of the European Border and Coast Guard with the Commission, other institutions and bodies as well as cooperation with other relevant partners, including third countries and third parties as appropriate.

- (15) European integrated border management requires an integrated planning between the Member States and the Agency for operations concerning borders and return, to prepare responses to higher impacts at the external borders on contingency planning and to coordinate the long-term development of capabilities both in terms of recruitment and training but also for the acquisition and development of equipment.
- (16) The implementation of this Regulation does not affect the division of competence between the Union and the Member States or the obligations of Member States under 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 United Nations Convention against Transnational Organized Crime and its Protocol against the Smuggling of Migrants by Land, Sea and Air, the Convention Relating to the Status of Refugees, the Convention for the Protection of Human Rights and Fundamental Freedoms and other relevant international instruments.
- (17) The implementation of this Regulation does not affect Regulation (EU) No 656/2014 of the European Parliament and of the Council<sup>18</sup>.
- (18) The Agency should carry out its tasks without prejudice to the responsibilities of the Member States with regard to maintaining law and order and safeguarding internal security.
- (19) The Agency should carry out its tasks without prejudice to the competence of the Member States as regards defence.
- (20) The extended tasks and competence of the Agency should be balanced with strengthened fundamental rights safeguards and increased accountability.
- (21) The Agency relies on the cooperation of Member States to be able to perform its tasks effectively. In that respect, it is important for the Agency and the Member States to act in good faith and to exchange accurate information in a timely manner. No Member State should be obliged to supply information the disclosure of which it considers contrary to the essential interests of its security.
- (22) Member States should also, in their own interest and in the interest of the other Member States, contribute relevant data necessary for the activities carried out by the Agency, including for the purposes of situational awareness, risk analysis, vulnerability assessments and integrated planning. Equally, they should ensure that the data are accurate, up-to-date and obtained and entered lawfully.
- (23) The European border surveillance system (EUROSUR) is necessary for the functioning of the European Border and Coast Guard in order to frame the exchange of information and the operational cooperation between national authorities of Member States as well as with the Agency. EUROSUR is providing those authorities

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<sup>18</sup> 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 Member States of the European Union (OJ L 189, 27.6.2014, 9. p.93).

and the Agency with the infrastructure and tools needed to improve their situational awareness and reaction capability at the external borders for the purpose of detecting, preventing and combating illegal immigration and cross-border crime and contributing to saving and ensuring the protection of the lives of migrants.

- (24) Member States should establish national coordination centres to improve the exchange of information and the cooperation for border surveillance and to perform checks at border crossing points between them and with the Agency. It is essential for the proper functioning of EUROSUR that all national authorities with a responsibility for external border surveillance under national law cooperate via national coordination centres.
- (25) This Regulation should not hinder Member States from making their national coordination centres also responsible for coordinating the exchange of information and for cooperation regarding other components of integrated border management such as returns.
- (26) The quality of the information exchanged between the Member States and the Agency is a prerequisite to the proper functioning of Integrated Border Management. Building on the success of EUROSUR, that quality should be ensured through standardisation, automation of the information exchange across networks and systems, information assurance and quality control of the data and information transmitted.
- (27) The Agency should provide the necessary assistance for the development and operation of EUROSUR including the interoperability of systems, in particular by establishing, maintaining and coordinating the EUROSUR framework.
- (28) EUROSUR should provide an exhaustive situational picture at the external borders but also within the Schengen area and in the pre-frontier area. It should cover land, sea and air border surveillance but also checks at border crossing points.
- (29) Air border surveillance should be an element of border management since both commercial and private flights and remotely piloted aircraft systems are being used for illegal activities related to immigration and cross border crime.
- (30) The EUROSUR Fusion services supplied by the Agency should be based on the common application of surveillance tools and inter-agency cooperation at Union level, including the provision of Copernicus Security services. They should provide the Member States and the Agency with added value information services related to Integrated Border Management. EUROSUR Fusion Services should be expanded to support checks at Border Crossing Points, Air Border Surveillance and monitoring of migration flows.
- (31) The practice of travelling in small and unseaworthy vessels has dramatically increased the number of migrants drowning at the southern maritime external borders. EUROSUR should considerably improve the operational and technical ability of the Agency and the Member States to detect such small vessels and to improve the reaction capability of the Member States, thereby contributing to reducing the loss of lives of migrants.
- (32) It is recognised in this Regulation that migratory routes are also taken by persons in need of international protection.
- (33) The Agency should prepare general and tailored risk analyses 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 crossings, trafficking in human beings, terrorism and threats of a hybrid nature, as well as the situation in relevant 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.

- (34) Given its activities at the external borders, the Agency should contribute to preventing and detecting serious crime with a cross-border dimension, such as 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 directly linked to unauthorised crossings of the external borders, including trafficking in human beings or smuggling of migrants. That said, Article 1(2) of Council Directive 2002/90/EC<sup>19</sup> allows Member States not to impose sanctions where the aim of the behaviour is to provide humanitarian assistance to migrants.
- (35) In a spirit of shared responsibility, the role of the Agency should be to monitor regularly the management of the external borders. The Agency should ensure proper and effective monitoring not only through situational awareness and risk analysis, but also through the 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.
- (36) 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 and to contribute to the European Border and Coast Guard standing corps and technical equipment pool. The vulnerability assessment should include an assessment of 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. The executive director should also set a time-limit within which those measures should be taken and closely monitor their timely implementation. Where the necessary measures are not taken within the set time-limit, the matter should be referred to the management board for a further decision.
- (37) If the Agency is not provided with the accurate and timely information necessary for carrying out a vulnerability assessment, it should be able to take that fact into

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<sup>19</sup> Council Directive 2002/90/EC of 28 November 2002 defining the facilitation of unauthorised entry, transit and residence (OJ L 328, 5.12.2002, p. 17).

account when performing the vulnerability assessment, unless duly justified reasons are provided for withholding the data.

- (38) The vulnerability assessment and the Schengen evaluation mechanism established by Council Regulation (EU) No 1053/2013<sup>20</sup> are two complementary mechanisms for guaranteeing the European quality control on the proper functioning of the Schengen area and ensuring the constant preparedness at the Union and national levels to respond to any challenges at the external borders. The synergies between those mechanisms should be maximised in view of establishing an improved situational picture on the functioning of the Schengen area, avoiding, to the extent possible, duplication of efforts on the Member States' side, and ensuring a better-coordinated use of the relevant Union financial instruments supporting the management of the external borders. For that purpose a regular exchange of information between the Agency and the Commission on the results of both mechanisms should be established.
- (39) Given that the Member States establish border sections, to which the Agency attributes impact levels, and that the reaction capabilities of the Member States and of the Agency should be linked to those impact levels, a fourth impact level should be established, corresponding to a situation where the Schengen area is at risk and where the Agency should intervene.
- (40) The Agency should organise the appropriate technical and operational assistance to Member States in order to reinforce their capacity to implement their obligations with regard to the control of the external borders and to face challenges at the external borders resulting from illegal immigration or cross-border crime. Such assistance should be without prejudice to the relevant national authorities' competence to initiate criminal investigations. In that 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 teams from the European Border and Coast Guard standing corps as well as provide the necessary technical equipment.
- (41) In cases where there is a specific and disproportionate challenge 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 both teams from the European Border and Coast Guard standing corps and technical equipment, including from the Rapid Reaction Equipment Pool. Rapid border interventions should provide reinforcement for a limited period of time in situations where an 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 operational staff of the European Border and Coast Guard standing corps available to form relevant teams and provide the necessary technical equipment. The Agency and the Member State concerned should agree upon an operational plan.
- (42) Where a Member State faces specific and disproportionate migratory challenges at particular areas of its external borders characterised by large, inward, mixed migratory flows the Member States should be able to rely on technical and

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<sup>20</sup> Council Regulation (EU) No 1053/2013 of 7 October 2013 establishing an evaluation and monitoring mechanism to verify the application of the Schengen acquis and repealing the Decision of the Executive Committee of 16 September 1998 setting up a Standing Committee on the evaluation and implementation of Schengen (OJ L 295, 6.11.2013, p. 27).

operational reinforcements. Those reinforcements should be provided in hotspot areas by migration management support teams. Those teams should be composed of operational staff to be deployed from the European Border and Coast Guard standing corps and experts from Member States deployed by EASO and, Europol or other relevant Union agencies. The Agency should assist the Commission in the coordination among the different agencies on the ground.

- (43) Member States should ensure that any 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. They should also ensure that such authorities' 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.
- (44) In June 2018, the European Council reconfirmed the importance of relying on a comprehensive approach to migration and considered that migration is a challenge not only for one Member State but for Europe as a whole. In that respect, it highlighted the importance for the Union to provide full support to ensure an orderly management of migration flows. That support is possible through the establishment of controlled centres where third-country nationals disembarked in the Union could be rapidly processed to ensure access to protection of those in need, with swift returns for those who are not. Whereas controlled centres are to be established on a voluntary basis, it should be possible for the Union to provide the Member States in question with full financial and operational support through the relevant Union Agencies including the European Border and Coast Guard Agency.
- (45) The European Border and Coast Guard Agency and the [European Union Agency for Asylum] should cooperate closely in order to address effectively the migratory challenges, in particular at the external borders characterised by large inward mixed migratory flows. In particular, both Agencies should coordinate their activities and support Member States to facilitate the procedure for international protection and the return procedure with regard to third country nationals whose application for international protection is rejected. The Agency and [the European Union Agency for Asylum] should also cooperate in other common operational activities such as shared risk analysis, collection of statistical data, training and support to Member States on contingency planning.
- (46) Member States should be able to rely on increased operational and technical reinforcement by migration management support teams in particular at hotspot areas or controlled centres. The migration management support teams should be composed of experts from the staff of the Agency and experts seconded by the Member States, and experts of the staff of/or Member States' experts deployed by, the [European Agency for Asylum], Europol or other relevant Union agencies. The Commission should ensure the necessary coordination in the assessment of needs and operations on the ground in view of the involvement of various Union agencies.
- (47) In hotspot areas, the Member States should cooperate with relevant Union agencies which should act within their respective mandates and powers, and under the coordination of the Commission. The Commission, in cooperation with the relevant Union agencies, should ensure that activities in hotspot areas comply with relevant Union law.

- (48) In controlled centres, Union agencies should, at the request of the Member State hosting such centres and under the coordination of the Commission, act in support of the host Member State to apply rapid procedures for international protection and/or return. In such centres, it should be possible to distinguish quickly between third-country nationals in need of international protection and those who are not in need of such protection, to carry out security checks and to carry out the entire or part of the procedure for international protection and/or return.
- (49) When justified by the results of the vulnerability assessment, risk analysis or when a critical impact is attributed to one or more border sections, the executive Director of the Agency should recommend to the Member State concerned to initiate and carry out joint operations or rapid border interventions.
- (50) Where control of the external border is rendered ineffective to such an extent that it risks jeopardising the functioning of the Schengen area, either because a Member State does not take the necessary measures in line with a vulnerability assessment or because a Member State facing specific and disproportionate challenges at the external borders has not requested sufficient support from the Agency or is not implementing such support, 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 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 Agency should then determine the actions to be taken for the practical execution of the measures indicated in the Commission decision. An operational plan should be drawn up by the Agency together with the Member State concerned. The Member State concerned should facilitate the implementation of the Commission decision and the operational plan by implementing among others its obligations provided for in Articles 44, 83 and 84. If a Member State does not comply within 30 days with that Commission decision and does not cooperate with the Agency in the implementation of the measures contained in that decision, the Commission should be able to trigger the specific procedure provided for in Article 29 of Regulation (EU) 2016/399 of the European Parliament and of the Council<sup>21</sup> to face exceptional circumstances putting the overall functioning of the area without internal border control at risk.
- (51) The European Border and Coast Guard standing corps should be a standing corps composed of 10,000 operational staff being border guards, return escorts, return specialists and other relevant staff. The standing corps should be composed of three categories of operational staff, namely statutory staff members employed by the European Border and Coast Guard Agency, staff seconded to the Agency by the Member States for long term durations and staff provided by Member States for short term deployments. The European Border and Coast Guard standing corps should be deployed in the framework of border management teams, migration management support teams or return teams.
- (52) The operational staff of the European Border and Coast Guard standing corps deployed as members of the teams should have the all the necessary powers to carry out border control and return tasks, including the tasks requiring executive powers

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<sup>21</sup> Regulation (EU) 2016/399 of the European Parliament and of the Council of 9 March 2016 on a Union Code on the rules governing the movement of persons across borders (Schengen Borders Code) (OJ L 77, 23.3.2016, p. 1).



defined in the relevant national laws or, for the staff of the Agency, in accordance with Annex V.

- (53) Member States should ensure their respective contributions to the European Border and Coast Guard standing corps in accordance with Annexe III for long term secondments and Annex IV for short term deployments. The individual contributions of Member States have been established based on the distribution key agreed during the negotiations in 2016 for the Rapid Reaction Pool and set out in Annex I to Regulation (EU) 2016/1624. This distribution key was proportionally adapted to the size of the European Border and Coast Guard standing corps. These contributions were also set up in a proportionate way for the Schengen associated countries.
- (54) The functioning of the European Border and Coast Guard standing corps and its composition should be subject to a midterm review carried out by the Commission.
- (55) The long-term development of human resources to secure the contributions of the Member States to the European and Border Guard standing corps should be supported by a financial support system. For this purpose, it is appropriate to authorise the Agency to use the award of grants to the Member States without a call for proposals under 'financing not linked to costs' in accordance with Article 125 (1) (a) of Regulation (EU, Euratom) 2018/1046. The financial support should enable Member States to hire and train additional staff to provide them with the necessary flexibility to comply with the mandatory contribution to the European and Border Guard standing corps. The dedicated financing system should strike a right balance between the risks of irregularities and fraud and costs of control. The Regulation sets the essential conditions triggering the financial support, namely the recruitment and training of the adequate number of border guards or other specialists corresponding to the number of officers seconded to the Agency for long term or the effective deployment of officers during the Agency's operational activities for at least 4 months. Given the lack of relevant and comparable data on actual costs across Member States, the development of a cost-based financing scheme would be overly complex and would not address the need for a simple, fast, efficient and effective financing scheme. For this purpose, it is appropriate to authorise the Agency to award grants to the Member States without a call for proposals in the form of 'financing not linked to costs' subject to the fulfilment of conditions in accordance with Article 125 (1) (a) of Regulation (EU, Euratom) 2018/1046. For the purpose of fixing the amount of such financing to different Member States, it is appropriate to use as a reference amount the annual salary of contractual agent Function Group III grade 8 step 1 of the European Institutions modulated by a corrective coefficient per Member State in line with the sound financial management principle and in the spirit of equal treatment. When implementing this financial support, the Agency and Member States shall ensure the compliance with the principles of co-financing and no double funding.
- (56) In view of deployment of the European Border and Coast Guard standing corps in the territory of third countries, the Agency should develop the capabilities for its own command and control structures.
- (57) In order to allow for the effective deployments from the European Border and Coast Guard standing corps as of 1 January 2020, certain decisions and implementing measures should be taken and put in place as soon as possible. In particular, by way of derogation from the normal deadline set in the Regulation, the decision of the Management Board as referred in Article 55 (4) on the profiles of the European

Border and Coast Guard standing corps should be adopted within 6 weeks of the entry into force of the Regulation. This decision should be followed by the nominations of the Member States provided for in Article 56 (4) and Article 57 (1) within 12 weeks of the entry into force of the Regulation.

- (58) Also, by way of derogation from the normal deadline set in the Regulation, the decision of the Management Board on the minimum number of items of technical equipment to meet the needs of the Agency in 2020 as referred in Article 64 (4) should be adopted within 6 weeks of the entry into force of the Regulation.
- (59) At the same time, in order to ensure the continuity of the support for operational activities organised by the Agency, all the deployments until 31 December 2019 should be planned and implemented, including under the Rapid Reaction Pool, in accordance with Articles 20, 30 and 31 of Regulation (EU) 2016/1624 and in accordance with the annual bilateral negotiations carried out in 2018. To that end, these provisions should be only repealed with effect from 1 January 2020.
- (60) The Agency's workforce will consist of staff performing the tasks devoted to the Agency, either in the Headquarters, or as part of the European Border and Coast Guard standing corps. The European Border and Coast Guard standing corps may comprise statutory staff as well as staff seconded for long duration or provided for short term deployment by national authorities. Statutory staff within the European Border and Coast Guard standing corps will primarily be deployed as members of the teams; only a limited and clearly defined part of this staff may be recruited to perform supportive functions for the establishment of the standing corps, notably at headquarters.
- (61) To overcome the persistent gaps in the voluntary pooling of technical equipment from Member States, in particular as regards large-scale assets, the Agency should have its own necessary equipment to be deployed in joint operations or rapid border interventions or any other operational activities. While the Agency has been legally able to acquire or lease its own technical equipment since 2011, this possibility was significantly hindered by the lack of budgetary resources.
- (62) Consequently, in order to match the level of ambition underlying the establishment of the European Border and Coast Guard standing corps, the Commission earmarked a significant envelope under the 2021-2027 multiannual financial framework to allow the Agency to acquire, maintain and operate the necessary air, sea and land assets corresponding to the operational needs. While the acquisition of the necessary assets could be a lengthy process, especially for large assets, the Agency's own equipment should ultimately become the backbone of the operational deployments with additional contributions of Member States to be called upon in exceptional circumstances. The Agency's equipment should be largely operated by the Agency's technical crews being part of the European Border and Coast Guard standing corps. In order to ensure the effective use of the proposed financial resources, the process should be based on a multiannual strategy decided as early as possible by the management board.
- (63) In the implementation of this Regulation, the Agency and the Member States, should make the best possible use of existing capabilities in terms of human resources as well as technical equipment, both at Union and national level.
- (64) The long-term development of new capabilities within the European Border and Coast Guard should be coordinated between the Member States and the Agency in

line with the multiannual strategic policy cycle, taking into account the long duration of certain processes. This includes the recruitment and training of new border guards, (which could during their career serve both in Member States and as part of the standing corps), the acquisition, maintenance and disposal of equipment (for which opportunities for interoperability and economies of scale should be sought) but also the development of new equipment and related technologies including through research.

- (65) The capability roadmap should converge the capability development plans of Member States and the multiannual planning of the Agency's resources to optimize long term investment to best protect the external Borders.
- (66) Taking into account the enhanced mandate of the European Border and Coast Guard Agency, the setting up of the European Border and Coast Guard standing corps and its strengthened presence on the ground at the external borders and its increased engagement in the field of returns, it should be possible for the Agency to establish antenna offices situated at locations in proximity of its significant operational activities for the period of duration of these activities, to act as an interface between the Agency and the host Member State and to deal with coordination, logistical and support tasks as well as to facilitate cooperation between the Agency and the host Member State.
- (67) The return of third-country nationals who do not fulfil or no longer fulfil the conditions for entry, stay or residence in the Member States, in accordance with Directive 2008/115/EC of the European Parliament and of the Council<sup>22</sup>, is an essential component of the comprehensive efforts to tackle illegal immigration and represents an important issue of substantial public interest.
- (68) 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 organise and conduct return interventions to reinforce the return systems of Member States requiring increased technical and operational assistance to comply with their obligation to return third-country nationals in accordance with that Directive.
- (69) The Agency should, in full respect for fundamental rights and without prejudice for the Member States' responsibility for issuing return decisions, provide technical and operational assistance to Member States in the return process, including the preparation of return decisions, identification of third country nationals and other pre-return and return-related activities of the Member States. 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.
- (70) 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. The assistance should also include setting up, operating and maintaining a central system

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<sup>22</sup> Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals (OJ L 348, 24.12.2008, p. 98).

for processing all information and data necessary for the Agency to provide technical and operational assistance in accordance with the Regulation, automatically communicated by the Member States' national return management systems.

- (71) The Agency should also provide technical and operational assistance to return activities of third countries, in particular when such assistance is justified by the priorities of the irregular migration policy of the Union.
- (72) 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.
- (73) Member States should be able to cooperate at operational level with other Member States and/or third countries at the external borders, including military operations with a law enforcement purpose, to the extent that that cooperation is compatible with the actions of the Agency.
- (74) The Agency should improve the exchange of information and the cooperation with other Union bodies, offices and agencies, such as EUROPOL, EASO, the European Maritime Safety Agency and the European Union Satellite Centre, the European Aviation Safety Agency or the Network Manager for the European Air Traffic Management in order to make best use of information, capabilities and systems which are already available at European level, such as the European Earth monitoring programme Copernicus.
- (75) Cooperation with third countries is an element of European Integrated Border Management. It should serve to promote European border management and return standards, to exchange information and risk analysis, to facilitate the implementation of returns with a view to increasing their efficiency and to support third countries in the area of border management and migration, including the deployment of the European Border and Coast Guard standing corps when such support is required to protect external borders and the effective management of the Union's migration policy.
- (76) Cooperation with third countries should take place in the framework of the external action of the Union and in line with the principles and objectives of Article 21 of the Treaty on European Union. The Commission will ensure consistency between the European Integrated Border Management and other Union policies in the field of the Union's external action and in particular the Common Security and Defence Policy. The Commission should be assisted by the High Representative of the Union and his or her services. Such cooperation should apply in particular to the activities of the Agency taking place on the territory of third countries or involving third country officials in areas such as risk analysis, planning and conduct of operations, training, information exchange and cooperation.
- (77) In order to ensure that the information contained in EUROSUR is as complete and updated as possible, in particular with regard to the situation in third countries, the Agency should cooperate with the authorities of third countries either in the framework of bilateral and multilateral agreements between the Member States and third countries including regional networks or through working arrangement established between the Agency and the relevant authorities of third countries. For those purposes the European External Action Service, Union delegations and offices should provide all information that may be relevant for EUROSUR.

- (78) This Regulation includes provisions on cooperation with third countries, because well-structured and permanent exchange of information and cooperation with those countries including but not limited to neighbouring third countries, are key factors for achieving the objectives of European Integrated Border Management. It is essential that any exchange of information and any cooperation between Member States and third countries be carried out in full compliance with fundamental rights.
- (79) To establish a comprehensive situational picture and risk analysis covering the pre-frontier area, the Agency and the National Coordination Centres should collect information and coordinate with Immigration Liaison Officers deployed in third countries by Member States, the European Commission, the Agency or other Union Agencies.
- (80) The False and Authentic Documents Online ('FADO') system was established by Joint Action 98/700/JHA within the General Secretariat of the Council, providing access to Member States' authorities to have at their disposal information on any new forgery methods that are detected and on the new genuine documents that are in circulation.
- (81) In its Conclusions of 27 March 2017, the Council stated that the management of the FADO system is outdated and that a change of its legal basis is required in order to continue meeting the requirements of Justice and Home Affairs policies. The Council also noted that synergies could be exploited in that regard using the Agency's expertise in the area of document fraud and the work the Agency has already been carrying out in the field. The Agency should therefore take over the administration as well as the operational and technical management of the FADO system from the General Secretariat of the Council of the European Union.
- (82) The FADO system should keep its multi-level structure to provide different levels of information on documents to different stakeholders, including the general public.
- (83) During the transitional period, it should be ensured that the FADO system is fully operational until the transfer is effectively carried out and the existing data are transferred to the new system. The ownership of the existing data should then be transferred to the Agency.
- (84) Any processing of personal data by Member States within the framework of this Regulation should be carried out in accordance with Regulation (EU) 2016/679 of the European Parliament and of the Council or Directive (EU) 2016/680 of the European Parliament and of the Council<sup>23</sup>, where applicable.
- (85) In the context of return it frequently happens that third country nationals do not hold any identification documents and do not cooperate on establishing their identity by withholding information or providing incorrect personal data. Given the particular policy need of expediency of return procedures, it is necessary for the Agency to be able to restrict certain rights of data subjects so as to prevent that the abuse of such rights may impede the proper implementation of return procedures and successful enforcement of return decisions by the Member States or prevent the Agency from

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<sup>23</sup> Directive (EU) 2016/680 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA (OJ L 119 4.5.2016, p. 89).

performing its tasks efficiently. Notably, the exercise of the right to the restriction of processing may significantly delay and obstruct the performance of the return operations. Furthermore, in some cases the right of access by the data subject may jeopardise a return operation by increasing the risk of absconding should the data subject learn that the Agency is processing his or her data in the context of a planned return operation. The right to rectification, on the other hand, may increase the risk that the third country national in question will be misleading the authorities by providing incorrect data.

- (86) In order to properly implement its tasks in the area of return, including by assisting Member States in the proper implementation of return procedures and successful enforcement of return decisions, as well as to facilitate return operations, the Agency may need to transfer personal data of returnees to third countries. The third countries of return are not often subject to adequacy decisions adopted by the Commission under Article 45 of Regulation (EU) 2016/679, or under Article 36 of Directive (EU) 2016/680, and have often not concluded or do not intend to conclude a readmission agreement with the Union or otherwise provide for appropriate safeguards within the meaning of Article 49 of [Regulation (EU) 45/2001] or within the meaning of the national provisions transposing Article 37 of Directive (EU) 2016/680. However, despite the extensive efforts of the Union in cooperating with the main countries of origin of illegally staying third-country nationals subject to an obligation to return, it is not always possible to ensure such third countries systematically fulfil the obligation established by international law to readmit their own nationals. Readmission agreements, concluded or being negotiated by the Union or the Member States and providing for appropriate safeguards for personal data, cover a limited number of such third countries. In the situation where such agreements do not yet exist, personal data should be transferred by the Agency for the purposes of facilitating the return operations of the Union, when the conditions laid down in Article 49(1)(d) of [Regulation (EU) 45/2001] are met.
- (87) This Regulation respects the fundamental rights and observes the principles recognised by Articles 2 and 6 of the Treaty on European Union (TEU) and by the Charter of Fundamental Rights of the European Union ('the Charter'), in particular respect for human dignity, the right to life, the prohibition of torture and inhuman or degrading treatment or punishment, the prohibition of trafficking in human beings, the right to liberty and security, the right to the protection of personal data, the right of access to documents, the right to asylum and to protection against removal and expulsion, non-refoulement, non-discrimination and the rights of the child.
- (88) This Regulation should establish a complaints mechanism for the Agency in cooperation with the fundamental rights officer, to safeguard 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 complaints mechanism should be without prejudice to access to administrative and judicial remedies and 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. It should cover in particular the number of complaints it has received, the types of fundamental rights violations involved, the operations concerned and, where possible, the follow-up measures taken by the Agency and Member States. The Fundamental Rights Officer should have access to all information concerning respect for fundamental rights in relation to all the activities of the Agency.

- (89) The Agency should be independent as regards technical and operational 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 that are conferred upon it by this Regulation.
- (90) The Commission and the Member States should be represented within a management board to exercise oversight over the Agency. The management 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 management board's work. The management board should be entrusted with the necessary powers to establish the Agency's budget, verify its execution, adopt appropriate financial rules, establish transparent working procedures for decision-making by the Agency and appoint the executive director and three deputy executive directors each of whom could be assigned responsibilities in a certain field of competences of the Agency, such as managing the European Border and Coast Guard standing Corps, overseeing the Agency's tasks regarding returns or managing the involvement in the large scale IT systems. 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 Commission.
- (91) In order to guarantee the autonomy of the Agency, it should be granted a stand-alone budget with a revenue which comes mostly 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 Union are concerned. The auditing of accounts should be undertaken by the Court of Auditors.
- (92) The Agency is expected to face challenging circumstances in the coming years to fulfil exceptional needs for recruiting and retaining qualified staff from the broadest possible geographical basis.
- (93) In view of the Agency's mandate and the important mobility of its staff members on the one hand, and, in order to prevent differences of treatment within the Agency's staff on the other hand, whereas staff's place of employment should in principle be set as Warsaw, the Agency's management board should, for a period of five years following the entry into force of this Regulation, be given the possibility to grant a "differential" monthly payment to Agency's staff members, taking due account of the overall remuneration received by individual staff members, including reimbursements of mission expenses. The modalities for granting such payment should be subject to prior approval by the Commission that should ensure that they remain proportionate to the importance of the objectives pursued and do not give rise to unequal treatment among staff of EU institutions, agencies and other bodies. Those modalities should be reviewed by 2024 to assess the payment's contribution to the objectives pursued.

- (94) Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council<sup>24</sup> should apply without restriction to the Agency, which should accede to the Interinstitutional 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)<sup>25</sup>.
- (95) In accordance with Regulation (EU) 2017/1939, the European Public Prosecutor's Office (EPPO) may investigate and prosecute fraud and other illegal activities affecting the financial interests of the Union as provided for in Directive (EU) 2017/1371 of the European Parliament and of the Council.
- (96) Regulation (EC) No 1049/2001 of the European Parliament and of the Council<sup>26</sup> 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 the information about all of its activities. It should likewise ensure that the public and any interested party are rapidly given information with regard to its work.
- (97) The Agency should also report on its activities to the European Parliament, to the Council and the Commission to the fullest extent.
- (98) 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.
- (99) Since the objectives of this Regulation, namely the development and implementation of a system of integrated management of the external borders to ensure the proper functioning of the Schengen area, cannot be sufficiently achieved by the Member States acting in an uncoordinated manner but can rather, by reason of the absence of controls at internal borders, the significant migratory challenges at the external borders, the need to monitor efficiently the crossing of those borders, and to contribute 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 TEU. 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.
- (100) The external borders referred to in this Regulation are those to which the provisions of Title II of Regulation (EU) 2016/399 apply, which includes the external borders of Schengen Member States in accordance with Protocol 19 on the Schengen acquis integrated into the framework of the European Union, annexed to the TEU and to the Treaty on the Functioning of the European Union (TFEU).
- (101) In order to ensure the effective implementation of European Integrated Border Management through a multiannual strategic policy cycle, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission in respect to the setting of policy priorities

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<sup>24</sup> Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) and repealing Regulation (EC) No 1073/1999 of the European Parliament and of the Council and Council Regulation (Euratom) No 1074/1999 (OJ L 248, 18.9.2013, p. 1).

<sup>25</sup> OJ L 136, 31.5.1999, p. 15.

<sup>26</sup> 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).



and the provision of strategic guidelines for European Integrated Border Management. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement on Better Law-Making of 13 April 2016. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.

- (102) In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission as regards the practical handbook for the implementation and management of EUROSUR, the details of the information layers of the situational pictures and the rules for the establishment of specific situational pictures, the measures to mitigate the risks at the external borders to be implemented by the Agency and requiring Member States to cooperate with the Agency in the implementation, the rules for the payment of the financial support for the development of the European Border and Coast Guard standing corps and the monitoring of the conditions applicable to the financial support, the practical handbook on European cooperation on coast guard functions, the technical specifications and procedures of FADO. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council<sup>27</sup>.
- (103) As regards Iceland and Norway, this Regulation constitutes a development of the provisions of the Schengen acquis within the meaning of the Agreement concluded by the Council of the European Union and the Republic of Iceland and the Kingdom of Norway concerning the latter's association with the implementation, application and development of the Schengen acquis<sup>28</sup>, which fall within the area referred to in point A of Article 1 of Council Decision 1999/437/EC<sup>29</sup>. 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 Union<sup>30</sup> provides for rules on the participation by those countries in the work of the Agency, including provisions on financial contributions and staff.
- (104) 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<sup>31</sup> which fall within the area referred to in point A of Article 1 of

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<sup>27</sup> Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).

<sup>28</sup> OJ L 176, 10.7.1999, p. 36.

<sup>29</sup> Council Decision 1999/437/EC of 17 May 1999 on certain arrangements for the application of the Agreement concluded by the Council of the European Union and the Republic of Iceland and the Kingdom of Norway concerning the association of those two States with the implementation, application and development of the Schengen *acquis* (OJ L 176, 10.7.1999, p. 31).

<sup>30</sup> OJ L 188, 20.7.2007, p. 19.

<sup>31</sup> OJ L 53, 27.2.2008, p. 52.

Decision 1999/437/EC read in conjunction with Article 3 of Council Decision 2008/146/EC<sup>32</sup>.

- (105) As regards Liechtenstein, this Regulation constitutes a development of the provisions of the Schengen acquis within the meaning of the Protocol between the European Union, the European Community, the Swiss Confederation and the Principality of Liechtenstein on the accession of the Principality of Liechtenstein to the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen acquis<sup>33</sup> 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/EU<sup>34</sup>.
- (106) 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 Union<sup>35</sup> provides for rules on the participation by those countries in the work of the Agency, including provisions on financial contributions and staff.
- (107) In accordance with Articles 1 and 2 of Protocol No 22 on the position of Denmark annexed to the TEU and to the TFEU, Denmark is not taking part in the adoption of this Regulation and is not bound by it, or subject to its application. Given that this Regulation builds upon the Schengen acquis, Denmark shall, in accordance with Article 4 of that Protocol, decide within a period of six months after the Council has decided on this Regulation whether it will implement it in its national law.
- (108) 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/EC<sup>36</sup>; 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.
- (109) This Regulation constitutes a development of provisions of the Schengen acquis in which Ireland does not take part, in accordance with Council Decision

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<sup>32</sup> Council Decision 2008/146/EC of 28 January 2008 on the conclusion, on behalf of the European Community, of the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis* (OJ L 53, 27.2.2008, p. 1).

<sup>33</sup> OJ L 160, 18.6.2011, p. 21.

<sup>34</sup> Council Decision 2011/350/EU of 7 March 2011 on the conclusion, on behalf of the European Union, of the Protocol between the European Union, the European Community, the Swiss Confederation and the Principality of Liechtenstein on the accession of the Principality of Liechtenstein to the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis*, relating to the abolition of checks at internal borders and movement of persons (OJ L 160, 18.6.2011, p. 19).

<sup>35</sup> OJ L 243, 16.9.2010, p. 4.

<sup>36</sup> 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).

2002/192/EC<sup>37</sup>; Ireland is therefore not taking part in the adoption of this Regulation and is not bound by it or subject to its application.

- (110) 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, on terms to be decided on a case-by-case basis by the management board. To that end, representatives of Ireland may be invited to attend meetings of the management board which allow them to participate fully in the preparation of such specific activities. Representatives of the United Kingdom may be invited to attend the meetings of the management board until [the date of withdrawal of the United Kingdom from the European Union.
- (111) Although the United Kingdom does not participate in this Regulation, it has [been granted] a possibility to cooperate with the European Border and Coast Guard in view of its position of a Member State of the Union. In view of the United Kingdom's notification of its wish to withdraw from the Union, special arrangements applicable to the operational cooperation with the United Kingdom on the basis of this Regulation should be applicable as long as the United Kingdom is a Member State or, provided an agreement between the Union and the United Kingdom based on Article 50 of the Treaty enters into force, as long as the United Kingdom is assimilated to a Member State on the basis of such agreement.
- (112) A controversy exists between the Kingdom of Spain and the United Kingdom on the demarcation of the borders of Gibraltar.
- (113) 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.
- (114) [The European DataProtectionData Protection Supervisor was consulted in accordance with Article 28(2) of Regulation (EC) n° 45/2001 and issued an opinion on ...
- (115) This Regulation aims to amend and expand the provisions of Regulation (EU) N° 2016/1624 and Regulation (EC) N° 1052/2013 of the European Parliament and of the Council, and to adapt Council Joint Action No 98/700/JHA to the institutional framework set by the TFEU. Since the amendments to be made are substantial in number and nature, those legal acts should, for the sake of clarity, be replaced and repealed,

HAVE ADOPTED THIS REGULATION:

## **CHAPTER I**

### **European Border and Coast Guard**

#### *Article 1*

#### *Subject matter*

This Regulation establishes a European Border and Coast Guard to ensure European Integrated Border Management at the external borders with a view to managing the crossing

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<sup>37</sup> Council Decision 2002/192/EC of 28 February 2002 concerning Ireland's request to take part in some of the provisions of the Schengen *acquis* (OJ L 64, 7.3.2002, p. 20).

of those external borders efficiently, as well as increasing the efficiency of the common return policy as a key component of sustainable migration management.

The Regulation addresses migratory challenges, including return, and potential future threats at those borders, thereby contributing to addressing serious crime with a cross-border dimension, to ensure a high level of internal security within the Union in full respect for fundamental rights, while safeguarding the free movement of persons within it.

## *Article 2*

### *Definitions*

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

- (1) ‘external borders’ means external borders as defined in point 2 of Article 2 of Regulation (EU) 2016/399, to which Title II of that Regulation applies;
- (2) ‘border crossing point’ means border crossing point as defined in point 8 of Article 2 of Regulation (EU) 2016/399;
- (3) ‘border control’ means border control as defined in point 10 of Article 2 of Regulation (EU) 2016/399;
- (4) ‘border surveillance’ means border surveillance as defined in point 12 of Article 2 of Regulation (EU) 2016/399;
- (5) ‘external flight’ means any flight of a manned or unmanned aircraft and its passengers and/or cargo to or from the territories of the Member States, which is not an internal flight as defined in point 3 of Article 2 of Regulation (EU) 2016/399;
- (6) ‘air border surveillance’ means the surveillance of external flights;
- (7) ‘situational awareness’ means the ability to monitor, detect, identify, track and understand illegal cross-border activities in order to find reasoned grounds for reaction measures on the basis of combining new information with existing knowledge, and to be better able to reduce loss of lives of migrants at, along or in the proximity of, the external borders;
- (8) ‘reaction capability’ means the ability to perform actions aimed at countering illegal cross-border activities at, along or in the proximity of, the external borders, including the means and timelines to react adequately;
- (9) ‘EUROSUR’ means the framework for information exchange and cooperation between the Member States and the Agency;
- (10) ‘situational picture’ means an aggregation of geo-referenced near-real-time data and information received from different authorities, sensors, platforms and other sources, which is transmitted across secured communication and information channels and can be processed and selectively displayed and shared with other relevant authorities in order to achieve situational awareness and support the reaction capability at, along or in proximity of the external borders and the pre-frontier area;
- (11) ‘external border section’ means the whole or a part of the external border of a Member State, as defined by national law or as determined by the national coordination centre or any other responsible national authority;

- (12) 'cross-border crime' means any serious crime with a cross-border dimension committed or attempted to be committed at, along or in the proximity of, the external borders;
- (13) 'pre-frontier area' means the geographical area beyond the external borders;
- (14) 'incident' means a situation relating to illegal immigration, cross-border crime or a risk to the lives of migrants at, along or in the proximity of, the external borders;
- (15) 'statutory staff' means staff employed by the Agency in accordance to the Staff Regulations of Officials of the European Union ('Staff Regulations') and the Conditions of Employment of Other Servants of the Union ('CEOS') laid down in Council Regulation No [259/68](#)
- (16) 'operational staff' means border guards, return escorts, return specialists and other relevant staff constituting the "European Border and Coast Guard standing corps". In accordance with the three categories defined under Article 55(1), operational staff is either employed by the European Border and Coast Guard Agency as statutory staff (category 1), seconded to the Agency by the Member States (category 2) or provided for short term deployment by the Member States (category 3). Operational staff is to act as members of border management teams, migration management support teams or return teams having executive powers. Operational staff also includes the statutory staff responsible for the functioning of the central unit of ETIAS;
- (17) 'border management teams' means teams formed from the European Border and Coast Guard standing corps to be deployed during joint operations at the external borders and rapid border interventions in Member States and third countries;
- (18) 'member of the teams' means a member of the European Border and Coast Guard standing corps deployed through border management teams, migration management support teams and return teams;
- (19) 'migration management support team' means a team of experts which provide technical and operational reinforcement to Member States, including at hotspot areas or in controlled centres, composed of operational staff from the European Border and Coast Guard standing corps, experts deployed by the [the European Union Agency for Asylum], and from Europol, or other relevant Union agencies as well as from Member States;
- (20) '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 from which it is launched, or in which a migration management support team is deployed;
- (21) 'home Member State' means the Member State from which a staff member is deployed or seconded to the operational staff of the European Border and Coast Guard standing corps;
- (22) 'participating Member State' means a Member State which participates in a joint operation, rapid border intervention, return operation, return intervention or in a deployment of a migration management support team, by providing technical equipment or operational staff of the European Border and Coast Guard standing corps, as well as a Member State which participates in return operations or return interventions by providing technical equipment or staff, but which is not a host Member State;
- (23) 'hotspot area' means an area in which the host Member State, the Commission, relevant Union agencies and participating Member States cooperate, with the aim of

managing an existing or potential disproportionate migratory challenge characterised by a significant increase in the number of migrants arriving at the external borders;

- (24) 'controlled centre' means a centre, established at the request of the Member State, where relevant Union agencies in support of the host Member State and with participating Member States, distinguish between third-country nationals in need of international protection and those who are not in need of such protection, as well as carry out security checks and where they apply rapid procedures for international protection and/or return;
- (25) 'return' means return as defined in point 3 of Article 3 of Directive 2008/115/EC;
- (26) 'return decision' means return decision as defined in point 4 of Article 3 of Directive 2008/115/EC;
- (27) 'returnee' means an illegally staying third-country national who is the subject of a return decision or its equivalent in a third country;
- (28) 'return operation' means an operation that is organised or coordinated by the European Border and Coast Guard Agency and involves technical and operational reinforcement provided to one or more Member States or to a third country, under which returnees from one or more Member States or from a third country are returned, either on a forced or voluntary basis, irrespective of the means of transport;
- (29) 'return intervention' means an activity of the European Border and Coast Guard Agency providing Member States or third countries with enhanced technical and operational assistance consisting of the deployment of return teams and the organisation of return operations;
- (30) 'return teams' means teams formed from the European Border and Coast Guard standing corps to be deployed during return operations, return interventions in Member States and third countries or other operational activities linked to the implementation of return-related tasks;
- (31) 'immigration liaison officer' means immigration liaison officer as defined in Article 1 of Council Regulation (EC) No 377/2004<sup>38</sup>.

### *Article 3*

#### ***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, where appropriate, measures related to the prevention and detection of cross-border crime, such as migrant smuggling, trafficking in human beings and terrorism, and measures related to the referral of persons who are in need of, or wish to apply for, international protection;
- (b) search and rescue operations for persons in distress at sea launched and carried out 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;

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<sup>38</sup> 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).

- (c) analysis of the risks for internal security and analysis of the threats that may affect the functioning or security of the external borders;
- (d) information exchange and cooperation between Member States and the Agency;
- (e) 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, as well as between authorities responsible for return in each Member State, including the regular exchange of information through existing information exchange tools;
- (f) cooperation among the relevant Union institutions, bodies, offices and agencies in the areas covered by this Regulation, including through regular exchange of information;
- (g) cooperation with third countries in the areas covered by this Regulation;
- (h) technical and operational measures within the Schengen area which are related to border control and designed to address illegal immigration and to counter cross-border crime better;
- (i) return of third-country nationals who are the subject of return decisions issued by a Member State;
- (j) use of state-of-the-art technology including large-scale information systems;
- (k) a quality control mechanism, in particular the Schengen evaluation mechanism, the vulnerability assessment and possible national mechanisms, to ensure the implementation of Union legislation in the area of border management;
- (l) solidarity mechanisms, in particular Union funding instruments and other operational support measures.

#### *Article 4*

#### ***European Border and Coast Guard***

The European Border and Coast Guard Agency ('the Agency') and the national authorities of Member States responsible for border management, including coast guards to the extent that they carry out border control tasks, as well as the authorities responsible for return, shall constitute the European Border and Coast Guard.

#### *Article 5*

#### ***European Border and Coast Guard Agency***

- (1) The European Border and Coast Guard Agency, originally established by Regulation (EC) No 2007/2004, shall be governed by this Regulation.
- (2) The Agency shall include the European Border and Coast Guard standing corps of 10 000 operational staff as referred to in Article 55.
- (3) 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 the external borders and return, in particular the Schengen Borders Code established by Regulation (EU) 2016/399.

- (4) The Agency shall contribute to the continuous and uniform application of Union law, including the Union acquis on fundamental rights, at all external borders. Its contribution shall include the exchange of good practices.

#### *Article 6* **Accountability**

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

#### *Article 7* **Shared responsibility**

- (1) The European Border and Coast Guard shall implement 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 sections of the external borders.
- (2) The Agency shall provide technical and operational assistance in the implementation of measures relating to the enforcement of return decisions. Member States shall retain the responsibility for issuing return decisions and the measures pertaining to the detention of returnees in accordance with Directive 2008/115/EC.
- (3) Member States shall ensure the management of their external borders and the enforcement of return decisions, in their own interests and in the common interest of all Member States in full compliance with Union law and in line with the multiannual strategic policy cycle for European Integrated Border Management referred to in Article 8, in close cooperation with the Agency.
- (4) The Agency shall support the application of Union measures relating to the management of the external borders and the enforcement of return decisions by reinforcing, assessing and coordinating the actions of Member States, as well as providing direct technical and operational assistance, in the implementation of those measures and in return matters.
- (5) 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 shall inform the management board on those matters on a regular basis and at least once a year.



## Article 8

### ***Multiannual strategic policy cycle for European Integrated Border Management***

- (1) The Commission and the European Border and Coast Guard shall ensure the effectiveness of European Integrated Border Management through a multiannual strategic policy cycle for the European Integrated Border Management.
- (2) The multiannual strategic policy for the European Integrated Border Management shall define how the challenges in the area of border management and return are to be addressed in a coherent, integrated and systematic manner.
- (3) The multiannual strategic policy cycle for the European Integrated Border Management shall consist of four stages as set out in paragraphs 4 to 7.
- (4) Based on the strategic risk analysis for European Integrated Border Management referred to in Article 30(2), the Commission shall be empowered to adopt delegated acts in accordance with Article 118 developing a multiannual strategic policy for European Integrated Border Management. That delegated act shall define policy priorities and provide the strategic guidelines for the following four years in relation to the components set out in Article 3.
- (5) In order to implement the delegated act referred to in paragraph 4, the Agency shall, by decision of the management board, based on a proposal of the executive director, establish a technical and operational strategy for European integrated border management. The Agency shall take into account, where justified, the specific situation of the Member States, in particular their geographical location. This strategy shall be in line with Article 3 and the delegated act referred to in paragraph 4. It shall promote and support the implementation of European Integrated Border Management in all Member States.
- (6) In order to implement the delegated act referred to in paragraph 4, the Member States shall establish their national strategies for integrated border management through close cooperation between all national authorities responsible for the management of borders and return. Those national strategies shall be in line with Article 3, the delegated act referred to in paragraph 4 and the technical and operational strategy referred to in paragraph 5.
- (7) Forty-two months after the adoption of the delegated act referred to in paragraph 4, the Commission shall carry out, with the support of the Agency, a thorough evaluation of its implementation. The results of the evaluation shall be taken into account for the preparation of the following cycle.
- (8) Where the situation at the external borders or in the area of return requires a change of the policy priorities, the Commission shall amend the multiannual strategic policy for European Integrated Border Management in accordance with the procedure set out in paragraph 4. Also the strategies mentioned in paragraph 5 and 6 shall be adapted where needed.

## Article 9

### ***Integrated planning***

- (1) On the basis of the multiannual strategic policy cycle for European Integrated Border Management referred to in Article 8, the European Border and Coast Guard shall establish an integrated planning for border management and returns.

- (2) Integrated planning shall include operational planning, contingency planning and capability development planning and shall be established in accordance with Article 67.
- (3) Each plan of the integrated planning shall contain the scenario against which it is developed. Scenarios shall be derived from risk analysis and shall reflect the possible evolution of the situation at the external borders and in the area of illegal migration and the challenges identified in the multiannual strategic policy cycle for European Integrated Border Management.
- (4) The Agency's management board shall meet at least once a year to discuss and approve the capability roadmap of the European Border and Coast Guard in accordance with 67 (6). Once the capability roadmap is approved by the management board, it shall be annexed to the technical and operational strategy referred to in Article 8 (5).

## CHAPTER II

# Functioning of the European Border and Coast Guard

### SECTION I

#### *TASKS OF THE EUROPEAN BORDER AND COAST GUARD AGENCY*

##### *Article 10*

##### *Tasks of the European border and coast guard agency*

- (1) The Agency shall perform the following tasks with a view to contributing to an efficient, high and uniform level of border control and return:
  1. monitor migratory flows and carry out risk analysis as regards all aspects of integrated border management;
  2. monitor the operational needs of Member States related to the implementation of returns, including by collecting operational data;
  3. 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;
  4. monitor the management of the external borders through liaison officers of the Agency in Member States;
  5. support the development and operation of the EUROSUR framework;
  6. 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;
  7. 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;
  8. provide technical and operational assistance to Member States and third countries in accordance with Regulation (EU) No 656/2014 and international law, in support of search and rescue operations for persons in distress at sea which may arise during border surveillance operations at sea;
  9. deploy the European Border and Coast Guard standing corps in the framework of border management teams, migration management support teams and return teams during joint operations and in rapid border interventions, return operations and return interventions;
  10. set up a technical equipment pool, including a rapid reaction 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;
  11. develop and manage its own human and technical capabilities to contribute to the European Border and Coast Guard standing corps and the technical equipment pool,

- including the recruitment and training of the members of its staff acting as team members;
12. within the framework of the migration management support teams at hotspot areas or in controlled centres;
  13. deploy operational staff and technical equipment to provide assistance in screening, debriefing, identification and fingerprinting;
  14. establish a procedure for referring and providing initial information to persons who are in need of, or wish to apply for, international protection, in cooperation with the [European Union Agency for Asylum] and competent national authorities;
  15. provide assistance in all stages of the return process and with the coordination and organisation of return operations, as well as return interventions;
  16. assist Member States in circumstances requiring increased technical and operational assistance to implement the obligation to return irregular migrants, including, coordination or organisation of return operations;
  17. set up a pool of forced-return monitors;
  18. deploy return teams during return interventions;
  19. 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 organised cross-border crime and terrorism;
  20. cooperate with the European Union Agency for Asylum in particular to facilitate measures where third country nationals, whose application for international protection has been rejected by means of a final decision, are subject to return;
  21. cooperate with the European Fisheries Control Agency and the European Maritime Safety Agency, within their respective mandates, to support the national authorities carrying out the coast guard functions set out in Article 70, by providing services, information, equipment and training, as well as by coordinating multipurpose operations;
  22. cooperate with third countries in the areas covered by the Regulation, including through the possible operational deployment of border management teams and return teams in third countries;
  23. support third countries in the coordination or organisation of return activities to other third countries, including the sharing of personal data for return purposes;
  24. assist Member States and third countries in the context of technical and operational cooperation between them in the matters covered by this Regulation;
  25. assist Member States and third countries in training of national border guards, other relevant staff and experts on return, including the establishment of common training standards;
  26. participate in the development and management of research and innovation activities relevant for the control and surveillance of the external borders, including the use of advanced surveillance technology, and develop pilot projects regarding matters covered by this Regulation;
  27. support the development of technical standards of equipment in the area of border control and return including for interconnection of systems and networks;

28. establish and maintain the communication network referred to in Article 14;
  29. develop and operate, in accordance with [Regulation (EC) No 45/2001], information systems that enable swift and reliable exchanges of information regarding emerging risks in the management of the external borders, illegal immigration and return, in close cooperation with the Commission, Union bodies, offices and agencies as well as the European Migration Network established by Decision 2008/381/EC;
  30. provide, as appropriate, the necessary assistance for the development of a common information-sharing environment, including interoperability of systems;
  31. manage and operate the False and Authentic Documents Online system referred to in Article 80;
  32. fulfil the tasks and obligations entrusted to the Agency referred to in [Regulation establishing a European Travel Information and Authorisation System (ETIAS)] and ensure the setting up and operation of the ETIAS Central Unit in accordance with Article 7 of [Regulation establishing a European Travel Information and Authorisation System (ETIAS)].
- (2) The Agency shall communicate on its own initiative on matters falling within its mandate. It shall provide the public with accurate and comprehensive information about its activities.

Communication activities shall not be detrimental to the tasks referred to in paragraph 1 of this Article, 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 91 and in accordance with relevant communication and dissemination plans adopted by the management board and in close cooperation, where appropriate, with other agencies.

## **SECTION 2**

### **INFORMATION EXCHANGE AND COOPERATION**

#### *Article 11*

#### ***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 12*

#### ***Obligation to exchange information***

1. 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, as well as to provide technical and operational assistance in the field of return, the Agency and the national authorities responsible for border management and return, including coast guards to the extent that they carry out border control tasks, 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 necessary information.

2. The Agency shall take appropriate 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.
3. The Agency and the [European Union Agency for Asylum] shall exchange information for the purpose of risk analysis, collection of statistical data, assessment of the situation in third countries, training and the support to Member States on contingency planning. For those purposes, the necessary tools and structures shall be developed between the Agencies.
4. The Agency shall take all necessary measures to facilitate the exchange of information relevant for its tasks with Ireland and the United Kingdom where that information relates to the activities in which it participate in accordance with Article 71 and Article 98(5).

### *Article 13*

#### ***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 and ensure the timely dissemination of all information from the Agency to all the relevant authorities within the Member State concerned, in particular the members of the management board and the National Coordination Centre.

### *Article 14*

#### ***Communication network***

1. The Agency shall establish and maintain a communication network in order to provide communication and analytical tools and allow for the exchange of sensitive non-classified and classified information in a secure manner and in near real time with, and among, the national coordination centres. The network shall be operational twenty-four hours a day and seven days a week and shall allow for:
  - (a) bilateral and multilateral information exchange in near-real-time;
  - (b) audio and video conferencing;
  - (c) secure handling, storing, transmission and processing of sensitive non-classified information;
  - (d) secure handling, storing, transmission and processing of EU classified information up to the level of CONFIDENTIEL UE/EU CONFIDENTIEL or equivalent national classification levels, ensuring that classified information is handled, stored, transmitted and processed in a separate and duly accredited part of the communication network.
2. The Agency shall provide technical support and ensure that the communication network is permanently available and can support the communication and information system managed by the Agency.

## Article 15

### *Information exchange systems and applications managed by the Agency*

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, third parties and third countries as referred to in Article 69 and Article 71.
2. The Agency shall develop, deploy and operate an information system capable of exchanging classified and sensitive non-classified information with those actors, and of exchanging personal data referred to in Article 80 and Articles 87 to 91 in accordance with Commission Decision (EU, Euratom) 2015/444<sup>39</sup>, Commission Decision 2015/443<sup>40</sup> and [Regulation (EC) No 45/2001].
3. The Agency shall deploy the information systems referred to in paragraph 2 on the Communication Network referred to in Article 14 as appropriate.
4. In relation to return, the Agency shall develop and operate a central return management system for processing all information necessary for the Agency to provide operational assistance in accordance with Article 49 automatically communicated by the Member States' national systems, including operational return data.

## Article 16

### *Technical standards for information exchange*

The Agency shall develop technical standards:

- (a) to interconnect the communication network with national networks used for establishing the national situational pictures and other relevant information systems for the purpose of this Regulation;
- (b) to develop and interface relevant information exchange systems and software applications of the Agency and of the Member States for the purpose of this Regulation;
- (c) to broadcast the situational pictures and, as appropriate, specific situational pictures and to ensure communication between relevant units and centres of national authorities and with the teams deployed by the Agency by using various means of communication such as satellite communications and radio networks;
- (d) to report the position of own assets making the best possible use of the technological development of the satellite navigation system established under the Galileo programme in accordance with Regulation (EU) No 1285/2013 of the European Parliament and of the Council<sup>41</sup>.

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<sup>39</sup> 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).

<sup>40</sup> Commission Decision (EU, Euratom) 2015/443 of 13 March 2015 on Security in the Commission (OJ L 72, 17.3.2015, p. 41).

<sup>41</sup> Regulation (EU) No 1285/2013 of the European Parliament and of the Council of 11 December 2013 on the implementation and exploitation of European satellite navigation systems and repealing Council

#### *Article 17*

#### ***Information assurance***

Member States shall ensure via their national coordination centre that their national authorities, agencies and other bodies using the communication network and the information exchange systems of the Agency:

- (a) have proper access to the relevant systems and networks;
- (b) implement the technical standards referred to in Article 16;
- (c) apply equivalent security rules and standards as those applied by the Agency for the handling of classified information;
- (d) exchange, process and store sensitive non-classified and classified information in compliance with Commission Decision [2015/443/EU](#).

### ***SECTION 3 EUROSUR***

#### *Article 18*

#### ***EUROSUR***

This Regulation establishes EUROSUR as an integrated framework for the exchange of information and for cooperation within the European Border and Coast Guard in order to improve situational awareness and to increase the reaction capability for border management of the Union for the purpose of detecting, preventing and combating illegal immigration and cross-border crime and contributing to ensuring the protection and saving the lives of migrants.

#### *Article 19*

#### ***Scope of EUROSUR***

- (1) EUROSUR shall apply to border checks at authorised border crossing points, and to the surveillance of external land, sea and air borders, including the monitoring, detection, identification, tracking, prevention and interception of unauthorised border crossings for the purpose of detecting, preventing and combating illegal immigration and cross-border crime and contributing to ensuring the protection and saving the lives of migrants.
- (2) EUROSUR shall not apply to any legal or administrative measure taken once the responsible authorities of a Member State have intercepted cross-border criminal activities or unauthorised crossings by persons of the external borders.

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Regulation (EC) No 876/2002 and Regulation (EC) No 683/2008 of the European Parliament and of the Council (OJ L 347, 20.12.2013, p. 1).



## *Article 20*

### ***EUROSUR components***

- (1) For the exchange of information and for the cooperation in the field of border control, Member States and the Agency shall use the EUROSUR framework, consisting of the following components:
  - (a) national coordination centres;
  - (b) national situational pictures;
  - (c) a European situational picture including external border sections with corresponding impact levels;
  - (d) specific situational pictures;
  - (e) EUROSUR Fusion Services as referred to in Article 29;
  - (f) integrated planning in line with Article 9 and Article 67.
- (2) The national coordination centres shall provide the Agency, via the communication network and relevant systems, with information, from their national situational pictures and as appropriate from specific situational pictures, which is required for the establishment and maintenance of the European situational picture.
- (3) The Agency shall give the national coordination centres, via the communication network, unlimited access twenty-four hours a day and seven days a week, to specific situational pictures and to the European situational picture.

## *Article 21*

### ***National coordination centre***

- (1) Each Member State shall designate, operate and maintain a national coordination centre which shall coordinate, and exchange information among all authorities with a responsibility for external border control at national level, as well as with the other national coordination centres and the Agency. Each Member State shall notify the establishment of its national coordination centre to the Commission, which shall forthwith inform the other Member States and the Agency thereof.
- (2) Without prejudice to Article 13 and within the framework of EUROSUR, the national coordination centre shall be the single point of contact for the exchange of information and for the cooperation with other national coordination centres and with the Agency.
- (3) The national coordination centre shall:
  - (a) ensure the timely exchange of information and timely cooperation between all national authorities with a responsibility for external border control, as well as with other national coordination centres and the Agency;
  - (b) ensure the timely exchange of information with search and rescue, law enforcement, asylum and immigration authorities and manage the dissemination of relevant information at national level;
  - (c) contribute to an effective and efficient management of resources and personnel;

- (d) establish and maintain the national situational picture in accordance with Article 26;
  - (e) support and coordinate the planning and implementation of national border control activities;
  - (f) coordinate the national border control system, in accordance with national law;
  - (g) contribute to regularly measuring the effects of national border control activities for the purposes of this Regulation;
  - (h) coordinate operational measures with other Member States and third countries, without prejudice to the competences of the Agency and of the other Member States;
  - (i) exchange relevant information with the national immigration liaison officers when acting, with a view to contributing to the European Situational Picture and supporting border control operations;
  - (j) coordinate the user access and security for national and Agency's information systems.
- (4) The national coordination centre shall operate twenty-four hours a day and seven days a week.

#### *Article 22*

##### ***Allocation of tasks to other authorities in the Member States***

- (1) Member States may charge regional, local, functional or other authorities which are in a position to take operational decisions, with ensuring situational awareness and reaction capability in their respective areas of competence, including the tasks and competences referred to in points (c), (e) and (f) of Article 21(3).
- (2) The decision of Member States to allocate tasks in accordance with paragraph 1 shall not affect the national coordination centre in its ability to cooperate and exchange information with other national coordination centres and the Agency.
- (3) In pre-defined cases, as determined at national level, the national coordination centre may authorise an authority referred to in paragraph 1 to communicate and exchange information with the regional authorities or the national coordination centre of another Member State or the competent authorities of a third country on condition that such authority regularly informs its own national coordination centre of such communication and information exchange.

#### *Article 23*

##### ***EUROSUR Handbook***

- (1) The Commission assisted by a Committee in accordance with the procedure referred to in Article 117(2) shall, in close cooperation with the Agency and any other relevant Union body, office or agency adopt and make available a practical handbook for the implementation and management of EUROSUR (the 'Handbook'). The Handbook shall provide technical and operational guidelines, recommendations and

best practices, including on cooperation with third countries. The Commission shall adopt the Handbook in the form of a recommendation.

- (2) The Commission may decide, after consultation with Member States and the Agency, to classify parts of the Handbook as RESTREINT UE/EU RESTRICTED in compliance with the rules laid down in the Rules of Procedure of the Commission.

#### *Article 24*

#### ***Monitoring of EUROSUR***

- (1) The Agency and the Member States shall ensure that procedures are in place to monitor the technical and operational functioning of EUROSUR against the objectives of achieving an adequate situational awareness and reaction capability at the external borders.
- (2) The Agency shall constantly monitor the quality of the service offered by the communication network and the quality of the data shared in the EUROSUR situational picture.
- (3) The Agency shall transmit the quality control information to the relevant users as part of the EUROSUR Fusion Services. Such information shall be classified RESTREINT UE/EU RESTRICTED

### ***SECTION 4***

#### ***SITUATIONAL AWARENESS***

#### *Article 25*

#### ***Situational pictures***

- (1) The national situational pictures, the European situational picture and the specific situational pictures shall be produced through the collection, evaluation, collation, analysis, interpretation, generation, visualisation and dissemination of information.

The situational pictures referred to in paragraph 1 shall consist of the following layers:

- (a) an events layer including all events related to unauthorised border crossings, cross-border crime, and the detection of unauthorised secondary movements;
- (b) an operational layer containing information on operations including the deployment plan, area of operation, patrol schedules and communication codes and the position, time, status and type of assets participating as foreseen in the operational plan;
- (c) an analysis layer containing analysed information which is relevant for the purposes of this Regulation and, in particular, for the attribution of the impact levels to the external border sections including imagery and geo-data, key developments and indicators, analytical reports, and other relevant supporting information.

- (2) The situational pictures referred to in paragraph 1 shall allow identifying and tracing events, operations and corresponding analysis relating to situations where human lives are at risk.
- (3) The events, operational and analysis layers of the situational pictures referred to in paragraph 1 shall be structured in the same manner.
- (4) The details of the information layers of the situational pictures and the rules for the establishment of specific situational pictures shall be laid down in an implementing act adopted by the Commission in accordance with the procedure referred to in Article 117(3).

The implementing act shall specify the type of information to be provided, the entities responsible for collecting, processing, archiving and transmitting specific information, the maximum delays for reporting, the data security and data protection rules and related quality control mechanisms.

#### *Article 26*

#### ***National situational picture***

- (1) The national coordination centre shall establish and maintain a national situational picture, in order to provide all authorities with responsibilities for border control with effective, accurate and timely information.
- (2) The national situational picture shall be composed of information collected from the following sources:
  - (a) the national border surveillance system in accordance with national law;
  - (b) stationary and mobile sensors operated by national authorities with a responsibility for external border surveillance;
  - (c) patrols on border surveillance and other monitoring missions;
  - (d) local, regional and other coordination centres;
  - (e) other relevant national authorities and systems, including immigration liaison officers, operational centres and contact points;
  - (f) border checks;
  - (g) the Agency;
  - (h) national coordination centres in other Member States;
  - (i) authorities of third countries, on the basis of bilateral or multilateral agreements and regional networks referred to in Article 75
  - (j) ship reporting systems in accordance with their respective legal bases;
  - (k) other relevant European and international organisations;
  - (l) other sources.
- (3) The national coordination centre shall attribute a single indicative impact level, ranging from 'low' and 'medium' to 'high' and 'critical', to each incident in the

events layer of the national situational picture. All incidents shall be shared with the Agency.

- (4) The national coordination centre may decide, at the request of the national authority responsible, to restrict access to information related to military assets on a need-to-know basis.
- (5) The national coordination centres of neighbouring Member States shall share with each other, directly and in near-real-time, the situational picture of neighbouring external border sections including the positions, status and type of own assets operating in the neighbouring external border sections.

#### *Article 27*

#### ***European situational picture***

- (1) The Agency shall establish and maintain a European situational picture in order to provide the national coordination centres and the Commission with effective, accurate and timely information and analysis, covering the external borders, the pre-frontier area and unauthorised secondary movements.
- (2) The European situational picture shall be composed of information collected from the following sources:
  - (a) national coordination centres, and national situational pictures, to the extent required by this Article and information and reports received from immigration liaison officers;
  - (b) the Agency, information and reports provided by its liaison officers in accordance with Articles 32 and 77;
  - (c) Union delegations and missions and operations of the Common Security and Defence Policy;
  - (d) other relevant Union bodies, offices and agencies and international organisations as referred to in Article 69;
  - (e) authorities of third countries, on the basis of bilateral or multilateral agreements and regional networks as referred to in Article 73, and working arrangements as referred to in Article 74(1);
  - (f) other sources.
- (3) The events layer of the European situational picture shall include information relating to:
  - (a) incidents and other events contained in the events layer of the national situational picture;
  - (b) incidents and other events contained in the common pre-frontier intelligence picture;
  - (c) incidents in the operational area of a joint operation, or rapid intervention coordinated by the Agency, or in a hotspot or controlled centre.
- (4) The operational layer of the European situational picture shall contain information on the joint operations, and rapid interventions coordinated by the Agency and on

hotspots and controlled centres, including the mission statement, location, status, duration, information on the Member States and other actors involved, daily and weekly situational reports, statistical data and information packages for the media.

- (5) The information on own assets in the operational layer of the European situational picture may be classified as RESTREINT UE/EU RESTRICTED as appropriate.
- (6) In the European situational picture, the Agency shall take into account the impact level that was assigned to a specific incident in the national situational picture by the national coordination centre and for any incident in the pre-frontier area, the Agency shall assign a single indicative impact level and shall inform the national coordination centres.

#### *Article 28*

##### ***Specific situational pictures***

- (1) The Agency and the Member States may establish and maintain specific situational pictures in order to support specific operational activities at the external borders or to share information with third parties referred to in Article 69 or third countries as provided for in Article 76 or with both.
- (2) The specific situational pictures shall be composed of a sub-set of information of the national and European situational pictures.
- (3) The modalities for establishing and sharing the specific situational pictures shall be described in the operational plan for the operational activities concerned and in the bilateral or multilateral agreement when the specific situational picture is established in the framework of a bilateral or multilateral cooperation with third countries.

#### *Article 29*

##### ***EUROSUR Fusion Services***

- (1) The Agency shall coordinate the EUROSUR Fusion Services in order to supply the national coordination centres, the Commission and itself with information on the external borders and on the pre-frontier area on a regular, reliable and cost-efficient basis.
- (2) The Agency shall provide a national coordination centre, at its request, with information on the external borders of the requesting Member State and on the pre-frontier area which may be derived from:
  - (a) selective monitoring of designated third-country ports and coasts which have been identified through risk analysis and information as being embarkation or transit points for vessels or other craft used for illegal immigration or cross-border crime;
  - (b) tracking of vessels or other craft over high seas which are suspected of, or have been identified as, being used for illegal immigration or cross-border crime;
  - (c) monitoring of designated areas in the maritime domain in order to detect, identify and track vessels and other craft being used for, or suspected of being used for, illegal immigration or cross-border crime;

- (d) environmental assessment of designated areas in the maritime domain and at the external land and air borders in order to optimise monitoring and patrolling activities;
  - (e) selective monitoring of designated pre-frontier areas at the external borders which have been identified through risk analysis and information as being potential departure or transit areas for illegal immigration or cross-border crime;
  - (f) monitoring of migratory flows towards and within the Union;
  - (g) media monitoring, open source intelligence and analysis of internet activities in line with Directive (EU) 2016/680 of the European Parliament and of the Council<sup>42</sup> for preventing illegal immigration or cross-border crime;
  - (h) analysis of large-scale information systems for the purpose of detecting changing routes and methods used for illegal immigration and cross-border crime.
- (3) The Agency may refuse a request from a national coordination centre for technical, financial or operational reasons. The Agency shall notify the national coordination centre in due time of the reasons for such a refusal.
- (4) The Agency may use on its own initiative the surveillance tools referred to in paragraph 2 for collecting information on the pre-frontier area, which is relevant for the European situational picture.

## **SECTION 5**

### **RISK ANALYSIS**

#### *Article 30*

#### **Risk analysis**

1. The Agency shall monitor migratory flows towards and within the Union, trends and other possible challenges at the external borders of the Union and with regard to return. 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. The common integrated risk analysis model shall be updated based on the outcome of the evaluation of the multiannual Strategic policy cycle for European Integrated Border Management referred to in Article 8 (7). The Agency shall also carry out the vulnerability assessment in accordance with Article 33.
2. The Agency shall prepare general annual risk analyses, which shall be submitted to the European Parliament, to the Council and to the Commission in accordance with

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<sup>42</sup> Directive (EU) 2016/680 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA (OJ L 119, 4.5.2016, p. 89).

Article 91, and tailored risk analyses for operational activities. Every two years, the Agency shall prepare and submit to the European Parliament, to the Council and to the Commission a strategic risk analysis for European Integrated Border Management which shall be taken into account for the preparation of the multiannual Strategic policy cycle for European Integrated Border Management.

3. The risk analyses referred to in paragraph 2 prepared by the Agency shall cover all aspects relevant to 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 as provided for in Article 26.
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 and their activities with regard to return.
7. The Agency shall incorporate the results of a common integrated risk analysis model in its development of common core curricula for the training of border guards and of staff involved in return-related tasks.

## ***SECTION 6***

### ***PREVENTION AND RESPONSIVENESS***

#### *Article 31*

#### ***Determination of external border sections***

For the purposes of this Regulation, each Member State shall divide its external land and sea and, if relevant, air borders into border sections, and shall notify them to the Agency.

Any change of the border sections by a Member State shall be coordinated with the Agency to ensure a continuity of risk analysis by the Agency.

#### *Article 32*

#### ***Agency's Liaison officers in Member States***

1. The Agency shall ensure regular monitoring of all Member States' management of the external borders and return 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 statutory staff of the Agency to be deployed as liaison officers. The executive director shall, based on risk analysis and in consultation with the Member States concerned, make a proposal on the nature and terms 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 shall be subject to approval 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 and return, including coast guards to the extent that they carry out border control tasks;
  - (b) support the collection of information required by the Agency for the monitoring of illegal immigration and risk analyses referred to in Article 30;
  - (c) support the collection of information referred to in Article 33 and required by the Agency, to carry out the vulnerability assessment;
  - (d) monitor the measures taken by the Member State at border sections to which a high or critical impact level has been attributed in accordance with Article 35;
  - (e) contribute to promoting the application of the Union acquis relating to the management of the external borders and return, including with regard to respect for fundamental rights;
  - (f) where possible assist the Member States in preparing their contingency plans concerning border management;
  - (g) 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;
  - (h) report regularly to the executive director on the situation at the external borders and the capacity of the Member State concerned to deal effectively with the situation at the external borders; report also on the execution of return operations towards relevant third countries;
  - (i) 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 43 ;
  - (j) monitor the measures taken by the Member State with regard to return and support the collection of information required by the Agency to carry out activities referred to in Article 49.
4. If the liaison officer's reports referred to in point (h) of paragraph 3 raise concerns about one or more aspects relevant for the Member State concerned, the latter will be informed without delay by the executive director.
5. 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 Article 26;
  - (b) keep regular contacts with national authorities which are responsible for border management and return, 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.

6. The report of the liaison officer shall form part of the vulnerability assessment as referred to in Article 33. The report shall be transmitted to the Member State concerned.
7. In carrying out their duties, the liaison officers shall take instructions only from the Agency.

### *Article 33*

#### ***Vulnerability assessment***

1. The Agency shall, by decision of the management board, based on a proposal of the executive director, establish a common vulnerability assessment methodology. That methodology shall include objective criteria against which the Agency shall carry out the vulnerability assessment, the frequency of such assessments, how consecutive vulnerability assessments are to be carried out, and the modalities for an effective system for monitoring the implementation of the recommendations.
2. The Agency shall monitor and assess the availability of the technical equipment, systems, capabilities, resources, infrastructure, adequately skilled and trained staff of Member States necessary for border control as defined in Article 3(1)(a). In this context, the Agency shall assess the capability development plans referred to in Article 67 (4) as regards their feasibility and implementation. For future planning it shall do so as a preventive measure on the basis of a risk analysis prepared in accordance with Article 30 (2). The Agency shall carry out such monitoring and assessment at least once a year, unless the executive director, based on risk assessments or a previous vulnerability assessment, decides otherwise.
3. Without prejudice to Articles 9 and 67, Member States shall, at the request of the Agency, provide information as regards technical equipment, staff and to the extent possible, the financial resources available at national level to carry out border control. Member States shall also provide information on their contingency plans on border management at the Agency's request.
4. 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 challenges at the external borders; to identify, especially for those Member States facing specific and disproportionate challenges, 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 European Border and Coast Guard standing corps and Technical Equipment Pool, including the Rapid Reaction Equipment Pool. That assessment is without prejudice to the Schengen evaluation mechanism.
5. In the vulnerability assessment, the Agency shall take into account Member States' capacity to carry out all border management tasks, including their capacity to deal with the potential arrival of large numbers of persons on their territory.
6. The results of the vulnerability assessment shall be submitted to the Member States concerned. The Member States concerned may comment on that assessment.
7. 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 and the time limit within which such measures shall be implemented. The executive director shall invite the Member States concerned to take the necessary measures based on an action plan developed by the Member State in consultation with the executive director.

8. The executive director shall recommend measures to the Member States concerned on the basis of 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.

The 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.

9. The Executive Director shall monitor the implementation of the recommendations by means of regular reports submitted by the Member States based on the action plans referred to in paragraph 7 of this Article.

In case of a risk of delay in the implementation of a recommendation by a Member State within the set time-limit, the Executive Director shall immediately inform the member of the Management Board from the Member State concerned and the Commission and enquire with the relevant authorities of that Member State on the reasons for the delay and offer support by the Agency to facilitate the implementation of the measure.

10. Where a Member State does not implement the necessary measures of the recommendation within the time limit referred to in paragraph 7 of this Article, 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 and the time limit within which 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 43.
11. The results of the vulnerability assessment shall be transmitted, in accordance with Article 91, on a regular basis and at least once a year to the European Parliament, to the Council and to the Commission.

#### *Article 34*

##### ***Synergies between the vulnerability assessment and the Schengen evaluation mechanism***

1. The synergies between vulnerability assessments and the Schengen evaluation mechanism established by Regulation (EU) No 1053/2013 shall be maximised in view of establishing an improved situational picture on the functioning of the Schengen area, avoiding, to the extent possible, duplication of efforts on the Member States' side, and ensuring a better coordinated use of the relevant Union financial instruments supporting the management of the external borders.
2. For the purpose referred to in paragraph 1 the Commission and the Agency shall establish the necessary arrangements to share with each other in a regular, secured

and timely manner all information related to the results of vulnerability assessments and the Schengen evaluation mechanism in the area of border management. The exchange mechanism shall cover the reports of vulnerability assessments and of Schengen evaluation visits, subsequent recommendations, action plans and any updates on the implementation of the action plans provided by the Member States.

3. The arrangements referred to in paragraph 2 shall cover results of the Schengen evaluation mechanism in the area of return to ensure the full awareness of the Agency on the identified shortcomings in view of enabling it to propose appropriate measures to support Member States concerned in this regard.

#### *Article 35*

##### ***Attribution of impact levels to external border sections***

1. Based on the Agency's risk analysis and vulnerability assessment and in agreement with the Member State concerned, the Agency shall attribute the following impact levels to each of the external land, sea and, if relevant, air border sections of Member States or change such levels:
  - (a) low impact level where the incidents related to illegal immigration or cross-border crime occurring at the relevant border section have an insignificant impact on border security;
  - (b) medium impact level where the incidents related to illegal immigration or cross-border crime occurring at the relevant border section have a moderate impact on border security;
  - (c) high impact level where the incidents related to illegal immigration or cross-border crime occurring at the relevant border section have a significant impact on border security;
  - (d) critical impact level where the incidents related to illegal immigration or cross-border crime occurring at the relevant border section have a decisive impact on border security to such an extent that they risk jeopardising the functioning of the Schengen Area.
2. The national coordination centre shall constantly assess whether there is a need to change the impact level of any of the border sections by taking into account the information contained in the national situational picture and inform the Agency accordingly.
3. The Agency shall visualise the impact levels attributed to the external borders in the European situational picture.

#### *Article 36*

##### ***Reaction corresponding to impact levels***

1. The Member States shall ensure that the border control activities carried out at the external border sections correspond to the attributed impact levels in the following manner:
  - (a) where a low impact level is attributed to an external border section, the national authorities responsible for external border control shall organise regular control

on the basis of risk analysis and ensure that sufficient personnel and resources are being kept in the border area in readiness for tracking, identification and interception;

- (b) where a medium impact level is attributed to an external border section, the national authorities responsible for external border control shall, in addition to the measures taken under point (a), ensure that appropriate control measures are being taken at that border section. When such control measures are taken, the national coordination centre shall be notified accordingly. The national coordination centre shall coordinate any support given in accordance with Article 21 (3);
  - (c) where a high impact level is attributed to an external border section, the Member State concerned shall, in addition to the measures taken under point (b), ensure, through the national coordination centre, that the national authorities operating at that border section are given the necessary support and that reinforced control measures are taken. That Member State may request support from the Agency subject to the conditions for initiating joint operations or rapid border interventions, as laid down in Article 37.
  - (d) where a critical impact level is attributed to an external border section, the Agency shall notify it to the Commission. The Member State concerned and the Agency shall, in addition to the measures taken under point (c), implement the recommendation issued by the executive director of the Agency in accordance with Article 42.
2. The national coordination centre shall regularly inform the Agency of the measures taken at national level pursuant to points (b), (c) and (d) of paragraph 1.
  3. Where a medium high or critical impact level is attributed to an external border section which is adjacent to the border section of another Member State or of a third country with which there are agreements or regional networks, as referred to in Article 73 and Article 74, the national coordination centre shall contact the national coordination centre of the neighbouring Member State or the competent authority of the neighbouring country and shall endeavour to coordinate together with the Agency the necessary cross-border measures.
  4. The Agency shall, together with the Member State concerned, evaluate the attribution of impact levels and the corresponding measures taken at national and Union level. That evaluation shall contribute to the vulnerability assessment by the Agency in accordance with Article 33.

**SECTION 7**  
**ACTION BY THE AGENCY AT THE EXTERNAL BORDERS**

*Article 37*

***Actions by the Agency at the external borders***

1. A Member State may request the Agency's 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 42 and Article 43.
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 the European Border and Coast Guard standing corps and technical equipment;
  - (b) organise rapid border interventions and deploy the European Border and Coast Guard standing corps and technical equipment;
  - (c) coordinate activities for one or more Member States and third countries at the external borders, including joint operations with third countries;
  - (d) deploy the European Border and Coast Guard standing corps in the framework of the migration management support teams, among others at hotspot areas or in controlled centres, including if necessary to provide technical and operational assistance in return activities;
  - (e) within the framework of operations mentioned in points (a), (b) and (c) of this paragraph and 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;
  - (f) give priority treatment to the EUROSUR Fusion Services.
3. The Agency shall finance or co-finance the activities referred to in paragraph 2 from its budget in accordance with the financial rules applicable to the Agency.
4. If the Agency has substantial additional financial needs due to a situation at the external borders, it shall inform the European Parliament, the Council and the Commission thereof without delay.

*Article 38*

***Initiating joint operations and rapid border interventions at the external borders***

1. A Member State may request that the Agency 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 challenges, 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 without authorisation, 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 on external border sections in accordance with Article 35 and the availability of resources.
4. The objectives of a joint operation or rapid border intervention may be achieved as part of a multipurpose operation. Such operations may involve coast guard functions and the 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 39*

#### ***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 technical and operational 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) 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 teams, including on permissible consultation of databases and permissible service weapons, ammunition and equipment in the host Member State;
  - (e) the composition of the 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 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;
  - (k) the terms of cooperation with third countries, other Union bodies, offices and agencies 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;
  - (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 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 areas in which the joint operation is foreseen to take place.
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 40*

#### ***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 as well as the outcome of the vulnerability assessment referred to in Article 33 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 to launch a rapid border intervention within two working days from the date of 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. He or she shall immediately assess the possibilities of redeployment of available team members within the European Border and Coast Guard standing corps, in particular the statutory staff of the Agency, present in other operational areas.
5. If the executive director decides to launch a rapid border intervention, he or she shall deploy available border management teams from the European Border and Coast Guard standing corps and equipment from the technical equipment pool in accordance with Article 64, and where necessary, he or she shall decide on the immediate reinforcement by one or more border management teams, in accordance with Article 58.
6. The executive director together with the host Member State shall draw up an operational plan as referred to in Article 39 (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 order to immediately deploy the operational staff available through redeployments from other operational areas or other duties.
8. In parallel to the deployment referred to in paragraph 7, and where necessary to secure the immediate reinforcement of the border management teams redeployed from other areas or duties, the executive director shall request from each Member State the number and profiles of additional staff to be additionally deployed from their national lists for short term deployments referred to in Article 58. 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.
9. Member States shall ensure that the number and profiles of the operational staff are immediately made available to the Agency to guarantee a complete deployment in accordance with Article 58(5) and (7).
10. Deployment of the first border management teams redeployed from other areas and duties 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 border management teams, shall take place where necessary, within seven working days of the deployment of the first teams.

11. Where the rapid border intervention is to take place, 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 the external borders where a strengthened deployment is most needed.

#### *Article 41*

#### ***Migration management support teams***

1. Migration management support teams may be deployed, at the request of a Member State, or upon the initiative of the Agency and with the agreement of the Member State concerned, to provide technical and operational reinforcement to that Member State, in particular at hotspot areas and controlled centres.

The Member State referred to in first paragraph shall submit a request for reinforcement by migration management support teams and an assessment of its needs to the Commission. The Commission shall, based on the assessment of needs of that Member State, transmit the request to the Agency, to [the European Union Agency for Asylum], Europol or other relevant Union agencies, as appropriate.

2. The relevant Union agencies shall assess a Member State's request for reinforcement and the assessment of its needs to define, under the coordination of the Commission, the necessary measures, including the deployment of technical equipment, to be agreed upon by the Member State concerned.
3. The Commission shall, in cooperation with the host Member State and the relevant Union agencies, establish the terms of cooperation for the deployment of the migration management support teams as well as the deployment of technical equipment, and shall be responsible for the coordination of the activities of those teams.
4. The technical and operational reinforcement provided, in full respect for fundamental rights, by migration management support teams may include:
  - (a) assistance in 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, security checks and providing information regarding the purpose of these procedures;
  - (b) initial information to persons who wish to apply for international protection and their referral to the competent national authorities of the Member State concerned or to the experts deployed by [the European Union Agency for Asylum];
  - (c) technical and operational assistance in the return process, including in the preparation of return decisions, acquisition of travel documents, preparation and organisation of return operations, including with regard to voluntary returns;
  - (d) the necessary technical equipment.

5. The Agency shall cooperate with the [the European Union Agency for Asylum] to facilitate measures for the referral to the procedure for international protection and, for third country nationals whose application for international protection has been rejected by means of a final decision, to the return procedure.
6. Migration management support teams shall, where necessary, include staff with expertise in child protection, trafficking in human beings, protection of fundamental rights and against gender-based persecution.

#### *Article 42*

##### ***Proposed actions at the external borders***

1. The executive director shall, based on the results of the vulnerability assessment or when a critical impact is attributed to one or more external border sections and taking into account the relevant elements in the Member State's contingency plans, the Agency's risk analysis and the analysis layer of the European situational picture, recommend to the Member State concerned to initiate and carry out joint operations or rapid border interventions or any other relevant actions by the Agency as defined in Article 37.
2. The Member State concerned shall respond to the recommendation of the Executive director within five working days. In case of a negative reply on the proposed actions, the Member State shall also provide the justifications underlying this reply. The Executive Director shall without delay notify the Commission on the proposed actions and the justifications for the negative reply in view of assessing whether urgent action may be required in accordance with Article 43.

#### *Article 43*

##### ***Situation at the external borders requiring urgent action***

1. Where control of the external borders is rendered ineffective to such an extent that it risks jeopardising the functioning of the Schengen area because:
  - (a) a Member State does not take the necessary measures in accordance with a decision of the management board referred to in Article 33 (10); or
  - (b) a Member State facing specific and disproportionate challenges at the external borders has either not requested sufficient support from the Agency under Article 38, Article 40, Article 41, Article 42 or is not taking the necessary steps to implement actions under those Articles,

the Commission, after consulting the Agency, may adopt without delay a decision by means of an implementing act in accordance with the procedure as referred to in Article 117(3), identifying measures to 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.

On duly justified imperative grounds of urgency relating to the functioning of the Schengen area, the Commission shall adopt immediately applicable implementing acts in accordance with the procedure referred to in Article 117(4).

2. Where a situation requiring urgent action arises, the European Parliament and the Council shall be informed of that situation without delay as well as of all subsequent measures and decisions taken in response.

3. To mitigate the risk of putting in jeopardy the Schengen area, the Commission decision referred to in paragraph 1 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 the European Border and Coast Guard standing corps;
  - (b) deploy the European Border and Coast Guard standing corps in the framework of the migration management support teams in particular at hotspot areas;
  - (c) coordinate activities for one or more Member States and third countries at the external borders, including joint operations with third countries;
  - (d) deploy technical equipment;
  - (e) organise return interventions.
4. The executive director shall, within two working days from the date of adoption of the Commission decision referred to in paragraph 1,
  - (a) determine the actions to be taken for the practical execution of the measures identified in that decision, including the technical equipment and the number and profiles of the operational staff needed to meet the objectives of that decision;
  - (b) submit the draft operational plan to the Member States concerned.
5. The executive director and the Member State concerned shall draw up the operational plan within two working days from the date of its submission.
6. The Agency shall, without delay and in any case within five working days from establishment of the operational plan, deploy the necessary operational staff from the European Border and Coast Guard standing corps referred to in Article 55 for the practical execution of the measures identified in the Commission decision referred to in paragraph 1 of this Article. Additional teams shall be deployed as necessary at a second stage and in any case within seven working days from the deployment of the first teams deployed in the operational area.
7. The Agency shall, without delay and in any case within 10 working days from establishment of the operational plan, deploy the necessary technical equipment for practical execution of the measures identified in the Commission decision referred to in paragraph 1.

Additional technical equipment shall be deployed as necessary at a second stage in accordance with Article 64.
8. The Member State concerned shall comply with the Commission decision referred to in paragraph 1. For that purpose it shall immediately cooperate with the Agency and take the necessary action, in particular by implementing the obligations provided in Articles 44, 83 and 84, to facilitate the implementation of that decision and the practical execution of the measures set out in that decision and in the operational plan.
9. In accordance with Article 58 and, where relevant Article 40, the Member States shall make available the operational staff determined by the executive director in accordance with paragraph 4 of this Article.

If the Member State concerned does not comply with the Commission decision referred to in paragraph 1 within 30 days and does not cooperate with the Agency pursuant to paragraph 8 of this Article, the Commission may trigger the procedure provided for in Article 29 of Regulation (EU) 2016/399.

#### *Article 44*

##### ***Instructions to the teams***

1. During deployment of border management teams, return teams and migration management support 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 the 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 teams are not in compliance with the operational plan, the coordinating officer shall immediately report to the executive director, who may, if appropriate, take action in accordance with Article 47(3).
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 which are not statutory staff members of the Agency, 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 regarding violations of fundamental rights or international protection obligations in the course of a joint operation or rapid border intervention.

#### *Article 45*

##### ***Coordinating officer***

1. The Agency shall ensure the operational implementation of all the organisational aspects of joint operations, pilot projects or rapid border interventions, including the presence of statutory staff members of the Agency.
2. Without prejudice to Article 60, the executive director shall appoint one or more experts from the statutory staff of the Agency to be deployed as a 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 teams. The role of the coordinating officer shall be to foster cooperation and coordination among 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 of their deployment to the teams;
- (b) monitor the correct implementation of the operational plan, including as regards the protection of fundamental rights and report to the Agency on this;
  - (c) act on behalf of the Agency in all aspects of the deployment of its teams and report to the Agency on all those aspects;
  - (d) report to the executive director where the instructions issued to its teams by the host Member States are not in compliance with the operational plan and, where appropriate, suggest to the executive director to consider taking a decision in accordance with Article 47.
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 46*

##### *Costs*

1. The Agency shall fully meet the following costs incurred by Member States in making available their operational staff for the purposes of deploying them for short duration as team members from the European Border and Coast Guard standing corps:
  - (a) travel costs from the home Member State to the host Member State and from the host Member State to the home Member State and within the host Member State for the purposes of deployment;
  - (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. Following prior approval by the Commission, the management board shall establish detailed rules, and update them as necessary, as regards the payment of the costs incurred by staff deployed for short duration in accordance with Article 58. The detailed rules shall be based to the extent possible on simplified cost options. Where relevant, the Management Board shall aim at ensuring coherency with the rules applicable to reimbursement of mission expenses of the statutory staff members.

#### *Article 47*

##### *Suspension or termination of activities*

1. The executive director shall terminate activities of the Agency if the conditions to conduct those activities are no longer fulfilled. The executive director shall inform the Member State concerned prior to such termination.

2. The Member States participating in a joint operation, rapid border intervention or migration management support team deployment may request that the executive director terminate that joint operation, or rapid border intervention or migration management support team deployment.
3. 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.
4. The executive director shall, after consulting the fundamental rights officer and informing the Member State concerned, withdraw the financing of a joint operation, rapid border intervention, pilot project, migration management support team deployment, 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.
5. If the executive director decides to suspend or terminate deployment by the Agency of a migration management support team, he or she shall inform the other relevant agencies active in that hotspot area or controlled centre of that decision.

#### *Article 48*

#### ***Evaluation of activities***

The executive director shall evaluate the results of the joint operations and rapid border interventions, pilot projects, migration management support team deployments and operational cooperation with third countries. He or she shall transmit 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 that analysis in the Agency's annual activity report.

### ***SECTION 8***

#### ***ACTION BY THE AGENCY IN THE AREA OF RETURNS***

#### *Article 49*

#### ***Return***

1. The Agency shall, with regard to return, and in accordance with the respect for fundamental rights and general principles of Union law as well as for international law, including refugee protection and children's rights, in particular:
  - (a) provide technical and operational assistance to Member States in the return of third country nationals, including the preparation of return decisions, the identification of third country nationals and other pre-return and return-related activities of the Member States, including voluntary departures, 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 experiencing challenges with regard to return or migratory pressure, including by deploying migration management teams;
  - (c) develop a reference model for a return case management system prescribing the structure of national return management systems, as well as provide technical and operational assistance to Member States in developing national return management systems aligned with the model;
  - (d) develop and operate a central system and a communication infrastructure between national return management systems of the Member States and the central system, as well as provide technical and operational assistance to Member States in connecting to the communication structure;
  - (e) provide technical and operational assistance to the Member States in the identification of third-country nationals and the acquisition of travel documents, including by means of consular cooperation, without disclosing information relating to the fact that an application for international protection has been made; organise and coordinate return operations and provide support with voluntary departures in cooperation with the Member States;
  - (f) 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;
  - (g) 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, analysis and recommendations 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 and technical and operational assistance in the implementation and management of return procedures in compliance with Directive 2008/115/EC, including in the preparation of return decisions, in identification and in the acquisition of travel documents;
  - (d) advice on and assistance in measures necessary to ensure the availability of returnees for return purposes and to prevent returnees from absconding, in accordance with Directive 2008/115/EC and international law;
  - (e) equipment, capacities and expertise for the implementation of return decisions and for the identification of third-country nationals.
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 Commission and with the support of relevant stakeholders, including the European Migration Network.



4. The Agency may exceptionally receive grants from Union funds dedicated to return activities in accordance with the financial rules applicable to the Agency. The Agency shall ensure that in its grant agreements with Member States any financial support is conditional upon the full respect for the Charter.

#### *Article 50*

##### ***Information exchange systems and management of return***

The Agency shall develop, deploy and operate information systems and software applications allowing for the exchange of classified and sensitive non-classified information for the purpose of return within the European Border and Coast Guard and for the purpose of exchanging personal data referred to in Articles 87-89 in accordance with Commission Decision (EU, Euratom) 2015/444, Commission Decision (EU, Euratom) 2015/443 and [Regulation (EC) No 45/2001].

In particular, the Agency shall set up, operate and maintain a central system for processing all information and data, automatically communicated by the Member States' national return management systems, necessary for the Agency to provide technical and operational assistance in accordance with Article 49.

#### *Article 51*

##### ***Return operations***

1. Without entering into the merits of return decisions, the Agency shall provide technical and operational assistance and ensure the coordination or the organisation of return operations, including through the chartering of aircraft for the purpose of such operations or organising returns on scheduled flights. The Agency may, on its own initiative coordinate or organise return operations.
2. Member States shall on a monthly basis provide operational data on return necessary for the assessment of return needs by the Agency and inform the Agency of their indicative planning of the number of returnees and of the third countries of return, both with respect to relevant national return operations, and of their needs for assistance or coordination by the Agency. The Agency shall draw up and maintain a rolling operational plan to provide the requesting Member States with the necessary operational assistance and reinforcements, including through 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 technical and operational assistance and, either at the request of the participating Member States or on its own initiative, ensure the coordination or the organisation of return operations for which the means of transport and forced-return escorts are provided by a third country of return ('collecting return operations'). The participating Member States and the Agency shall ensure that the respect for fundamental rights, the principle of non-refoulement, and the proportionate use of means of constraints are guaranteed during the entire return operation. At least one Member State representative, and one forced-return monitor from the pool established under Article 52 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.

4. The executive director shall draw up a return plan without delay for collecting return operations. The executive director and any participating Member State shall agree on the plan detailing the organisational and procedural aspects of the collecting 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 parties referred to in paragraph 3 and in this paragraph.
5. The return plan of collecting return operations shall be binding on the Agency and any participating Member State. It shall cover all the necessary steps for carrying out the collecting return operation.

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 each forced-return operation to the executive director, the fundamental rights officer and to the competent national authorities of all the Member States involved in the given operation. If necessary, appropriate follow-up shall be ensured by the executive director and competent national authorities respectively.

If the Agency has concerns regarding the respect of fundamental rights during a return operation, it shall communicate them to the participating Member States and to the Commission.

6. The executive director shall evaluate the results of the return operations and shall 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. The executive director shall include that analysis in the Agency's annual activity report.
7. 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 or controlled centres.

#### *Article 52*

##### ***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 62 of this Regulation.
2. The management board shall, on a proposal of the executive director determine the profile and the number of 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 forced-return monitors corresponding to the defined profile. Forced-return monitors with specific expertise in child protection shall be included in the pool.

3. Member States' contribution of 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.
4. The Agency shall make the forced-return monitors available upon request to participating Member States to monitor, on their behalf, the correct implementation of the return operation and return interventions throughout their duration. It shall make available forced-return monitors with specific expertise in child protection for any return operation involving children.
5. 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 53*

##### ***Return teams***

1. The Agency may deploy return teams either at the request of a Member State or on its own initiative, during return interventions, in the framework of migration management teams or as necessary to provide additional technical and operational assistance in the area of return, including where such challenges are linked to large inward mixed migratory flows or taking in third-country nationals rescued at sea.
2. Article 41(2),(3),(4) and (5), and Articles 44, 45 and 46 shall apply mutatis mutandis to the European return teams.

#### *Article 54*

##### ***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, either on its own initiative or 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 return teams to the host Member State providing assistance in the implementation of return procedures and the organisation of return operations from the host Member State.
2. The Agency may also launch return interventions in third countries, based on the directions set out in the multiannual strategic policy cycle, where such third country requires additional technical and operational assistance with regard to its return activities. Such intervention may consist of the deployment of return teams for the purpose of providing technical and operational assistance to return activities of the third country.

3. In circumstances where a Member State is facing specific and disproportionate challenges when implementing its obligation to return third-country nationals who are the subject of return decisions, the Agency shall, either on its own initiative or upon the request of that Member State, provide the appropriate technical and operational assistance in the form of a rapid return intervention. A rapid return intervention may consist in the rapid deployment of return teams to the host Member State providing assistance in the implementation of return procedures and the organisation of return operations from the host Member State.
4. In the context of a return intervention, the executive director shall draw up an operational plan without delay, in agreement with the host Member State and the participating Member States. The relevant provisions of Article 39 shall apply.
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.

## ***SECTION 9*** ***CAPABILITIES***

### *Article 55*

#### ***European Border and Coast Guard standing corps***

1. A European Border and Coast Guard standing corps of 10 000 operational staff shall be part of the Agency. This standing corps shall be composed of the following three categories of staff in accordance with the annual availability scheme set in Annex I:
  - (a) Category 1: operational staff members of the Agency recruited in accordance with Article 94 (1) and deployed in operational areas in accordance with Article 56;
  - (b) Category 2: operational staff seconded from Member States to the Agency for a long term duration as part of the standing corps; in accordance with Article 57;
  - (c) Category 3: operational staff from Member States provided to the Agency for a short term deployment as part of the standing corps in accordance with Article 58.
2. The Agency shall deploy members of the European Border and Coast Guard standing corps as members of the border management teams, migration management support teams, return teams in joint operations, rapid border interventions or return interventions or any other relevant operational activities in the Member States or in third countries.
3. In accordance with Article 83, all the members of the European Border and Coast Guard standing corps shall be enabled to carry out border control or return tasks, including the tasks requiring executive powers defined in the relevant national laws or, for the staff of the Agency, in accordance with Annex II.

4. On a proposal by the executive director taking into account the Agency's risk analysis, the results of the vulnerability assessment and the multiannual strategic policy cycle, and building on the numbers and profiles available to the Agency through its statutory staff and ongoing secondments, the management board shall decide by 31 March of each year:
  - (a) on the numbers per specific profiles of operational staff under each of the three categories within the European Border and Coast Guard standing corps to form teams in the following year;
  - (b) on the specific numbers and profiles of operational staff per Member State to be seconded to the Agency in accordance with Article 57 and to be nominated in accordance with Article 58 in the following year;
  - (c) an indicative multiannual planning of profiles for the years thereafter to facilitate the long-term planning for the Member States' contributions and the recruitment of the Agency's statutory staff.
5. For the purpose of Article 74, the Agency shall develop and ensure the command and control structures for the effective deployments of the European Border and Coast Guard standing corps in the territory of third countries.
6. The Agency may recruit up to 4% of the total number of the European Border and Coast Guard standing corps as staff having supportive functions for the establishment of the standing Corps, planning and management of its operations and for the acquisition of the Agency's own equipment.

#### *Article 56*

##### ***Agency's statutory staff in the European Border and Coast Guard standing corps***

1. The Agency shall contribute to the European Border and Coast Guard standing corps members of its statutory staff (Category 1) to be deployed to operational areas as members of the teams with all the tasks and powers, including the task to operate the Agency's own equipment.
2. In accordance with Article 62(2), following their recruitment, the new staff members shall undergo full border-guard or return-related training, as relevant, in the framework of dedicated training programmes designed by the Agency, and, based on agreements with selected Member States, implemented in their specialised academies. The cost of training shall be entirely covered by the Agency.
3. Throughout their employment, the Agency shall ensure that its statutory staff members discharge their duties as team members with high standards. Adequate training maps shall be designed for each staff member ensuring their constant professional qualification to fulfil border guard or return-related tasks.
4. Other staff members employed by the Agency who are not qualified to perform border control or return functions shall only be deployed during joint operations for coordination and other related tasks. They shall not form part of the teams.

#### *Article 57*

### ***Member States' participation in the European Border and Coast Guard standing corps through long-term secondment***

1. The Member States shall contribute to the European Border and Coast Guard standing corps operational staff seconded as team members to the Agency (Category 2). The duration of individual secondments shall be determined in accordance with Article 93(7). In order to facilitate the implementation of the financial support system referred to in Article 61, the secondment shall, as a general rule, start at the beginning of a calendar year.
2. Each Member State shall be responsible to ensure continuous contributions of operational staff as seconded team members in accordance with Annex III.
3. The operational staff seconded to the Agency shall have the same tasks and powers of the members of the teams. The Member State that has seconded those operational staff shall be considered to be their home Member State. During the secondment, the location(s) and duration of the deployment(s) of seconded team members shall be decided by the executive director according to the operational needs.
4. By 30 June each year, each Member State shall nominate for secondment their operational staff in accordance with the specific numbers and profiles decided by the Management Board for the following year as referred to in Article 55(4). The Agency may verify whether the operational staff proposed by Member States correspond to the defined profiles and possess the necessary language skills. By 15 September, the Agency shall accept the proposed candidates or request that a Member State propose another candidate for secondment in case of incompliance with the required profiles, insufficient language skills, misconduct or infringement of the applicable rules during previous deployments.
5. Where, due to force majeure, an individual operational staff member cannot be seconded or is unable to continue their secondment, the Member State concerned shall ensure a replacement with another operational staff member having the required profile.

#### *Article 58*

### ***Member States' participation in the European Border and Coast Guard standing corps through short-term deployments***

1. In addition to the secondments in accordance with Article 57, by 30 June of each year, the Member States shall also contribute to the European Border and Coast Guard standing corps by nominating border guards and other relevant staff to the national list of operational staff for short-term deployments (Category 3) in accordance with the contributions indicated in Annex IV and in accordance with the specific numbers of profiles decided by the Management Board for the following year as referred to in Article 55(4). The national lists of nominated operational staff shall be communicated to the Agency. The payment of the costs incurred by staff deployed under this Article shall be made in accordance with the provisions of Article 46(2).
2. Each Member State shall be responsible to ensure that operational staff nominated are available upon request of the Agency in accordance with the arrangements

defined in this Article. Each operational staff member shall be available for a period of up to a maximum of 4 months within a calendar year.

3. The Agency may verify whether operational staff nominated for short-term deployments by Member States correspond to the defined profiles and possess the necessary language skills. The Agency may request that a Member State remove an operational staff member from the national list in case of incompliance with the required profiles, insufficient linguistic skills, misconduct or infringement of the applicable rules during previous deployments.
4. By 31 July of each year, the Agency shall request the contribution by Member States of their individual operational staff members to joint operations for the following year. The periods of individual deployment shall be decided in the annual bilateral negotiations and agreements between the Agency and Member States. However, as a final result Member States shall make the operational staff available for deployment within the numbers and profiles specified in the request of the Agency.
5. Where, due to force majeure, an individual operational staff member cannot be deployed in accordance with the agreements, the Member State concerned shall ensure a replacement with an operational staff member from the list having the required profile.
6. In case of increased needs for the reinforcement of an ongoing joint operation or a need to launch a new joint operation not specified in the respective annual work programme, and the corresponding result of annual bilateral negotiations, the Executive Director shall inform without delay the Member States about the additional needs by indicating possible numbers of operational staff and profiles to be provided by each Member State. Once an amended operational plan or, where relevant, a new operational plan is agreed upon by the executive director and the host Member State, the formal request for the number and profiles of operational staff shall be made by the Executive Director. The respective team members shall be deployed from each Member State within 20 working days from that formal request.
7. Where the risk analysis or any available vulnerability assessment show that a Member State is faced with a situation that would substantially affect the discharge of national tasks, its respective contribution shall be half of its contribution for that year established in Annex IV. If a Member State invokes such an exceptional situation, it shall provide comprehensive reasons and information on the situation to the Agency in writing, the content of which shall be included in the report referred to in Article 65.
8. The duration of the deployment for a specific operation shall be determined by the home Member State but in any event shall not be less than 30 days, except if the operation of which the deployment is a part, has a shorter duration than 30 days.

#### *Article 59*

#### ***Mid-term review of the functioning of the EUROPEAN BORDER AND COAST GUARD standing corps***

1. By 31 June 2024, based in particular on the reports referred to in Article 65, the Commission shall carry out a mid-term review on the functioning of European Border and Coast Guard standing corps, assessing its overall number and composition. The review shall take into account the evolution of the statutory staff

for the Agency's contributions or any significant changes in the individual Member States' capabilities affecting their abilities to contribute to the standing corps.

2. This mid-term review shall be accompanied, where necessary, by appropriate proposals to amend Annexes I, III and IV.

#### *Article 60*

#### *Antenna offices*

1. Subject to the agreement of the host Member State, the Agency may set up antenna offices on its territory to facilitate and improve coordination of the operational activities, including in the field of returns, organised by the Agency in that Member State or in the neighbouring region and to ensure the effective management of the human and technical resources of the Agency. The antenna offices shall be temporary establishments set up for the period of time necessary for the Agency to carry out significant operational activities in that specific Member State or the neighbouring region concerned. That period of time may be prolonged, if necessary.
2. The Agency and the host Member State where the antenna office is set up shall endeavour to make the necessary arrangements in order to provide the best possible conditions needed to fulfil the tasks assigned to the antenna office.
3. The antenna offices shall, where applicable:
  - (a) provide operational and logistical support and ensure the coordination of Agency's activities in the operational areas concerned;
  - (b) provide operational support to the Member State in the operational areas concerned;
  - (c) monitor the activities of the Agency's teams and regularly report to the headquarters;
  - (d) cooperate with the host Member State(s) on all issues related to the practical implementation of the operational activities organised by the Agency in that Member State(s), including any additional issues that might have occurred in the course of these activities;
  - (e) support the coordinating officer referred to in Article 45 in his/ her cooperation with the participating Member States on all issues related to their contribution to the operational activities organised by the Agency and, if necessary, liaise with the headquarters;
  - (f) support the coordinating officer in facilitating, if necessary, the coordination and communication between the Agency's Teams and the relevant authorities of the host Member State;
  - (g) organise logistical support relating to the deployment of the members of the teams and the deployment and use of technical equipment;
  - (h) provide all other logistical support regarding the operational area they are responsible for with a view to facilitating the smooth running of the operational activities organised by the Agency;



- (i) support the Agency's liaison officer to identify any current or future challenges for the border management of the area they are responsible for or for the implementation of the return acquis and regularly report to the headquarters;
  - (j) ensure the effective management of the Agency's own equipment in the areas covered by its activities, including their possible registration, long-term maintenance and any logistical support needed.
4. Each antenna office shall be managed by a representative of the Agency appointed by the executive director. The Head of the antenna office who is appointed shall oversee the overall work of the office and shall act as its single point of contact with the headquarters.
  5. The management board on a proposal of the executive director shall decide on the setting up, composition, duration and where needed possible prolongation of the duration of an antenna office taking into account the opinion of the Commission and the agreement of the Member State on the territory of which that antenna office shall be situated. The management board shall take its decision by a two-thirds majority of all members with a right to vote.
  6. The Executive Director shall report to the Management Board on a quarterly basis on the activities of antenna offices. The activities of the antenna offices shall be described in a separate section of the annual activity report referred to 98(2) point 10.

#### *Article 61*

#### ***Financial support for the development of the European Border and Coast Guard standing corps***

1. Member States are entitled to receive funding in the form of financing not linked to costs on yearly basis in order to support the development of human resources to secure their contributions to the European and Border Guard standing corps in accordance with Annexes III and IV, in accordance with Article 125 (1) (a) of Regulation (EU, Euratom) 2018/1046 which shall be payable after the end of the year concerned and upon fulfilment of conditions laid down in accordance with paragraphs 3 and 4. That financing shall be based on a reference amount as set in paragraph 2 and shall amount to:
  - (a) 100% of the reference amount multiplied by the number of border guards or other officers indicated annually for secondment in accordance with Annex III;
  - (b) 30% of the reference amount multiplied by the number of border guards or other officers effectively deployed in accordance with Article 58 within the limit set by Annex IV.
2. The reference amount referred in paragraph 1 shall be equivalent to the annual basic salary for a contract agent Function Group III grade 8 step 1 defined in accordance with Article 93 of the the Conditions of Employment of Other Servants of the Union (CEOS) and subject to a correction co-efficient applicable in the Member State concerned.
3. The annual payment of the amount referred to in paragraph 1(a) shall be due on condition that the Member States increase accordingly their respective overall national border guards staffing through the recruitment of new border guards and

other officers in the period concerned. The relevant information for the purpose of reporting shall be provided to the Agency in the annual bilateral negotiations and verified through the vulnerability assessment in the following year. The annual payment of the amount referred to in paragraph 1(b) shall be due in relation to the number of border guards or other officers effectively deployed for at least 4 months in accordance with Article 58 within the limit set by Annex IV.

4. The Commission shall adopt detailed rules for the modalities of annual payment and the monitoring of the applicable conditions provided in paragraph 3 by means of an implementing act in accordance with the procedure referred to in Article 117(3).

## *Article 62*

### *Training*

1. The Agency shall, taking into account the capability roadmap referred to in Article 9(4), where available, and 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. It shall provide border guards, return specialists and other relevant staff who are members of the European Border and Coast Guard standing corps with advanced training relevant to their tasks and powers. Experts from the staff of the Agency shall conduct regular exercises with those border guards and other team members in accordance with the advanced training and exercise schedule referred to in the annual work programme of the Agency.
2. The Agency shall ensure that all the staff members recruited to act as operational staff of the European Border and Coast Guard standing corps have received adequate training in relevant Union and international law, including on fundamental rights, access to international protection and, where appropriate, search and rescue, prior to their initial deployment in operational activities organised by the Agency. For that purpose, the Agency shall, based on agreements with selected Member States, implement the necessary training programmes in their national academies. The cost of training shall be entirely covered by the Agency.
3. The Agency shall take the necessary initiatives to ensure that all operational staff of the Member States who participate in the teams from the European Border and Coast Guard standing corps, have received training in relevant Union and international law, including on fundamental rights, access to international protection and where appropriate search and rescue, prior to their participation in operational activities organised by the Agency.
4. The Agency shall take the necessary initiatives to ensure training for staff involved in return-related tasks who are allocated to the European Border and Coast Guard standing corps and the pool referred to in Article 52. The Agency shall ensure that its staff and all staff who participate in return operations and in return interventions have received training in relevant Union and international law, including on fundamental rights and access to international protection, prior to their participation in operational activities organised by the Agency.
5. 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, as well as a common curriculum for the training of staff involved in return-related tasks. The common core curricula shall aim to promote the highest standards and best practices in the implementation of Union border management and return 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 into the training they provide to their national border guards and staff involved in return-related tasks.

6. 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.
7. The Agency may organise training activities in cooperation with Member States and third countries on their territory.
8. The Agency shall establish an exchange programme enabling border guards participating in its 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 63*

#### ***Acquisition or leasing of technical equipment***

1. The Agency may acquire, either on its own or as co-owner with a Member State, or lease technical equipment to be deployed during joint operations, pilot projects, rapid border interventions, activities in the area of return, including return operations, return interventions, migration management support team deployments or technical assistance projects in accordance with the financial rules applicable to the Agency.
2. Based on a proposal of the executive director after receiving the positive opinion of the Commission, the management board shall establish a comprehensive multiannual strategy on how the Agency's own technical capabilities shall be developed taking into account the multiannual strategic policy cycle for the European Integrated Border Management including the capability roadmap referred to in Article 9(4) as available and the budgetary resources made available for this purpose in the multiannual financial framework.

The strategy shall be accompanied by a detailed implementation plan specifying the timeline for acquisition or leasing, procurement planning and risk mitigation. If the strategy and the plan do not follow the Commission opinion, the agency shall send a justification of its decisions to the Commission. Following the adoption of the strategy, the implementation plan shall become part of the multiannual programming component of the programming document referred to in Article 98(2) point 10.

3. The Agency may acquire technical equipment by decision of the executive director in consultation with the management board and in accordance with the applicable procurement rules. 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.

4. Where the Agency acquires or leases major technical equipment such as aircraft, helicopters or vessels, 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.
5. 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 terms ensuring the operability of the equipment. In the case of co-owned assets, the terms shall also cover the periods of full availability of the assets for the Agency and determine the use of the equipment, including specific provisions on rapid deployment during rapid border interventions.
6. Where the Agency does not have the required qualified statutory staff, 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. In such case, 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 64(8).

#### *Article 64*

#### ***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 by the Agency for its operational activities.
2. Equipment solely owned by the Agency shall be fully available for deployment at any time as referred to in Article 63(5).
3. Equipment co-owned by the Agency at a share of more than 50 % shall also be available for deployment in accordance with an agreement between a Member State and the Agency as referred to in Article 64 (5).
4. The Agency shall ensure the compatibility and interoperability of the equipment listed in the technical equipment pool.
5. To that end, it shall define technical standards to be met by equipment for its deployment in the activities of the Agency, where necessary. Equipment to be acquired by the Agency, be it as sole or co-owner, and equipment owned by Member States which is listed in the technical equipment pool shall meet these standards.
6. On a proposal of the executive director taking into account the Agency's risk analysis and the results of vulnerability assessments, the Management Board shall establish by 31 March the minimum number of items of technical equipment required to meet the needs of the Agency in the following year, in particular as regards carrying out joint operations, migration management support team deployments, rapid border interventions, activities in the area of return, including return operations and return interventions. The Agency's own equipment shall be included in the minimum

number of items of technical equipment. The same decision shall establish rules relating to the deployment of technical equipment in the operational activities.

If the minimum number of items of technical equipment proves to be insufficient to carry out the operational plan agreed for such activities, the Agency shall revise it on the basis of justified needs and of an agreement with the Member States.

7. The technical equipment pool shall contain the minimum number of items 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 team deployments, pilot projects, rapid border interventions, return operations or return interventions.

8. The technical equipment pool shall include a rapid reaction equipment pool containing a limited number of items of equipment needed for possible rapid border interventions. The contributions of Member States to the rapid reaction equipment pool shall be planned in accordance with the annual bilateral negotiations and agreements referred in paragraph 8. For the equipment on the list of the items in this pool, Member States may not invoke the exceptional situation referred to in paragraph 8.

The equipment on this list shall be sent to the destination for deployment as soon as possible, and, in any event, no 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 63 (1).

9. 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 items 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 13. The Agency's request shall be made at least 45 days before the intended deployment of major technical equipment and 30 days before the intended deployment of other equipment. The contributions to the technical equipment pool shall be reviewed annually.

10. 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 of items per type of technical equipment and the terms for the deployment and reimbursement of costs as well as on the limited number of items of technical equipment for a rapid reaction equipment pool. For budgetary purposes that decision should be taken by the management board by 31 March each year.

11. If a rapid border intervention takes place, Article 40 (11) will apply accordingly.

12. If unexpected needs for technical equipment for a joint operation or a rapid border intervention arise after the minimum number of items of technical equipment has been set and those needs cannot be met from the technical equipment pool or 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.
13. 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 items of technical equipment required in the pool has not been met, 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 shortfall. The management board shall inform the Commission of the shortfall and the steps it has taken. The Commission shall subsequently inform the European Parliament and the Council thereof and of its own assessment.
14. 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 515/2014 of the European Parliament and of the Council<sup>43</sup> 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 items of technical equipment for a given year.

The Member States shall make that technical equipment co-financed under the Specific Actions of the Internal Security Fund or any other dedicated Union funding available for deployment to the Agency upon its request through the annual bilateral negotiations. Each item of equipment shall be made available for a period of minimum 5 months. In case of an operation referred to in Article 40 or in Article 43 of this Regulation, they may not invoke the exceptional situation referred to in paragraph 8 of this Article.
15. 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);
  - (c) overall numbers of items of equipment required;
  - (d) crew requirements if applicable;
  - (e) other information, such as registration details, transportation and maintenance requirements, national applicable export regimes, technical instructions, or other information relevant to appropriate use of the equipment;
  - (f) indication whether an item of equipment was financed from Union funding.

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<sup>43</sup> Regulation (EU) No 515/2014 of the European Parliament and of the Council of 16 April 2014 establishing, as part of the Internal Security Fund, the instrument for financial support for external borders and visa and repealing Decision No 574/2007/EC (OJ L 150, 20.5.2014, p. 143).

16. The Agency shall finance at 100 % the deployment of technical equipment which forms part of the minimum number of items 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 items 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 65*

#### ***Reporting on the Agency's capabilities***

1. On a proposal of the Executive Director, the Management Board shall adopt and submit to the European Parliament, the Council and the European Commission an annual report on the implementation of Articles 52, 56, 57, 58, 63 and 64.
2. The report shall include in particular
  - (a) the number of operational staff that each Member State has committed to the European and Border Guard standing corps and the pool of forced return monitors;
  - (b) the number of operational staff committed to the European and Border Guard standing corps by the Agency;
  - (c) the number of operational staff actually deployed from the European Border and Coast Guard standing corps by each Member State per profile in the previous year;
  - (d) the number of items of technical equipment that each Member State and the Agency has committed to the technical equipment pool;
  - (e) the number of items of technical equipment deployed by each Member State and the Agency in the previous year from the technical equipment pool, with special reference to
  - (f) commitments to and the deployments from the Rapid Reaction Equipment Pool;
  - (g) the development of the own human and technical capabilities of the Agency.
3. That report shall list the Member States that invoked the exceptional situation referred to in Article 58 paragraph 7 and Article 64 paragraph 8 in the previous year and include the reasons and information provided by the Member State concerned.
4. To ensure transparency, the Management Board shall be informed on a quarterly basis on the elements indicated in paragraph 2 in relation to the ongoing year.

#### *Article 66*

#### ***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, taking into account the capability roadmap referred to in Article 9 (4). 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 50. It may use those results as appropriate in joint operations, rapid border interventions, return operations and return interventions.

2. The Agency, taking into account the capability roadmap referred to in Article 9 (4), shall assist the Member States and the Commission in identifying key research themes. The Agency shall assist Member States and the Commission in drawing up and implementing 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, and where the Commission has delegated the relevant powers to it, 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;
  - (b) adopting the instruments of budget execution for revenue and expenditure and carrying out all the operations necessary for the management of the programme;
  - (c) providing support in programme implementation.
4. The Agency may plan and implement pilot projects regarding matters covered by this Regulation.

#### *Article 67*

#### ***Establishment of the plans***

1. Plans being part of the integrated planning for border management and return referred to in Article 9 shall be established in accordance with paragraphs 2, 3 and 4.
2. Member States and the Agency shall establish operational plans for border management and returns. The operational plans of Member States related to border sections with high and critical impact levels shall be established in cooperation with neighbouring Member States and with the Agency. For the activities of the Agency, operational planning for the following year shall be defined in annex to the single programming document referred to in Article 100 and for each specific operational activity through the operational plan referred to in Article 39 and Article 75(3).
3. Member States shall adopt a contingency plan for the management of their borders and return. In line with the national integrated border management strategy, the contingency plans shall describe all the necessary measures and resources for the possible reinforcement of capabilities including logistics and support both at national level and from the Agency.

The corresponding scenarios and the part of the contingency plans requiring additional support from the European Border and Coast Guard shall be jointly prepared by each Member State and the Agency in close coordination with neighbouring Member States.

4. Member States shall adopt a capability development plan for border management and return in line with their national integrated border management strategy. The



capability development plan shall describe the scenario envisaged and the related medium to long-term evolution of the national capabilities for border management and return.

The national capability development plan shall address in particular the recruitment and training policy of the border guards and return specialists, the acquisition and maintenance of equipment and the necessary research and development activities and the corresponding financial aspects.

5. The Agency shall establish a synthesis of the national capability development plans and a multiannual strategy for the acquisition of the Agency's equipment referred to in Article 63 and the multiannual planning of profiles for the European Border and Coast Guard standing corps.

The Agency shall share this synthesis with the Member States and the Commission with a view to identify possible synergies and opportunities for cooperation in the various areas covered by the capability development plans, including joint procurements. Based on the identified synergies, the Agency may invite the Member States to participate in follow up actions for cooperation.

6. The capability development roadmap referred to in Article 9(4) shall be proposed by the Executive Director on the basis of the synthesis of the national capability development plans taking into account, inter alia, the results of the risk analysis and vulnerability assessments carried out in accordance with Article 33 and the Agency's own multiannual plans.
7. The methodology and the procedure to establish the scenarios referred to in paragraph 2 and the plans referred to in paragraphs 3, 4 and 5 shall be adopted by the Agency's Management Board on a proposal by the Executive Director.

## ***SECTION 10***

### ***THE EUROPEAN TRAVEL INFORMATION AND AUTHORISATION SYSTEM (ETIAS)***

#### *Article 68*

#### ***Creation of the ETIAS Central Unit***

1. An ETIAS Central Unit is established.
2. The Agency shall ensure the setting-up and operation of an ETIAS Central Unit referred to in Article 7 of [Regulation establishing a European Travel Information and Authorisation System (ETIAS)]."

## *SECTION II COOPERATION*

### *SUB SECTION I COOPERATION WITHIN THE EU*

#### *Article 69*

#### *Cooperation of the Agency with Union institutions, bodies, offices, agencies, and international organisations*

1. The Agency shall cooperate with Union institutions, bodies, offices and agencies, and international organisations, within their respective legal frameworks and make use of existing information, capabilities and systems available in the framework of EUROSUR.  
In accordance with paragraph 1, the Agency shall cooperate in particular with:
  - (a) the Commission and the European External Action Service;
  - (b) the European Police Office (Europol);
  - (c) the European Asylum Agency;
  - (d) the European Union Agency for Fundamental Rights;
  - (e) Eurojust;
  - (f) the European Union Satellite Centre;
  - (g) the European Maritime Safety Agency and the European Fisheries Control Agency;
  - (h) the European Agency for the Operational Management of large-scale IT Systems in the Area of Freedom, Security and Justice;
  - (i) the European Aviation Safety Agency and the Network Manager established under the Regulation (EU) No 677/2011 laying down detailed rules for the implementation of air traffic management (ATM) network functions;
  - (j) the Maritime Analysis and Operations Centre - Narcotics (MAOC-N);
  - (k) Missions and operations of the Common Security and Defence Policy.
2. Cooperation referred to in paragraph 1 shall take place within the framework of working arrangements concluded with the entities referred to in paragraph 1. 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. As regards the handling of classified information, those arrangements shall provide that the Union body, office or agency or international organisation concerned comply with security rules and standards equivalent to those applied by the Agency. An assessment visit shall be conducted prior to the conclusion of the arrangement and the Commission shall be informed of the outcome of the assessment visit.
4. In carrying out activities under this Regulation, the Agency shall cooperate with the Commission and, where relevant, with Member States and the European External

Action Service. Although outside the scope of this Regulation, it shall also engage in such cooperation in activities 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, of the High Representative of the Union for Foreign Affairs and Security Policy and of the Member States.

5. The Union institutions, bodies, offices, agencies and international organisations referred to in paragraph 1, shall use information received from the Agency only within the limits of their competences and insofar as they respect fundamental rights, including data protection requirements. Onward transmission or other communication of personal data processed by the Agency to other Union institutions, bodies, offices and agencies 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 87 to 90. 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.
6. Information between the Agency and the Union bodies, offices and agencies, and international organisations, referred to in paragraph 2 shall be exchanged via the communication network referred to in Article 14 or via other accredited information exchange systems which fulfil the criteria of availability, confidentiality and integrity.

#### *Article 70*

#### ***European cooperation on coast guard functions***

1. Without prejudice to EUROSUR, 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 those 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) building capacity by drawing up guidelines and recommendations and by establishing best practices as well as by providing training and exchange of staff;
  - (d) enhancing the exchange of information and cooperation on coast guard functions including by analysing operational challenges and emerging risks in the maritime domain;

- (e) sharing capacity by planning and implementing multipurpose operations and by sharing assets and other capabilities, to the extent that these activities are coordinated by those agencies and are agreed to by the competent authorities of the Member States concerned.
2. The precise forms of cooperation on coast guard functions between the Agency, 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 those agencies. Such an 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, the European Maritime Safety Agency and the European Fisheries Control Agency, make available a practical handbook on European cooperation on coast guard functions. That handbook shall contain guidelines, recommendations and best practices for the exchange of information. The Commission shall adopt the handbook in the form of a recommendation in accordance with the procedure referred to in Article 117(3).

#### *Article 71*

#### ***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. For the purposes of EUROSUR, the exchange of information and the cooperation with Ireland and the United Kingdom may take place on the basis of bilateral or multilateral agreements between Ireland or the United Kingdom respectively and one or several neighbouring Member States or through regional networks based on those agreements. The national coordination centres of the Member States shall be the contact points for the exchange of information with the corresponding authorities of Ireland and the United Kingdom within EUROSUR.
3. The agreements referred to in paragraph 2 shall be limited to the following exchange of information between the national coordination centre of a Member State and the corresponding authority of Ireland or the United Kingdom;
  - (a) information contained in the national situational picture of a Member State to the extent transmitted to the Agency for the purposes of the European situational picture;
  - (b) information collected by Ireland and the United Kingdom which is relevant for the purposes of the European situational picture;
  - (c) information as referred to in Article 26 (5).
4. Information provided in the context of EUROSUR by the Agency or by a Member State which is not party to an agreement as referred to in paragraph 2 shall not be shared with Ireland or the United Kingdom without the prior approval of the Agency or of that Member State. The Member States and the Agency shall be bound by the refusal to share that information with Ireland or the United Kingdom.

5. Onward transmission or other communication of information exchanged under this Article to third countries or to third parties shall be prohibited.
6. The agreements referred to in paragraph 2 shall include provisions on the financial costs arising from the participation of Ireland and the United Kingdom in the implementation of those agreements.
7. Support to be provided by the Agency pursuant to points 12, 13 and 15 of Article 10 (1) shall cover the organisation of return operations of Member States in which Ireland or the United Kingdom also participates.
8. 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.

## ***SUB SECTION 2***

### ***COOPERATION WITH THIRD COUNTRIES***

#### *Article 72*

#### ***Cooperation with third countries***

1. In line with Article 3 (g), the Member States and the Agency shall cooperate with third Countries for the purpose of integrated border management and migration policy, including returns.
2. Based on the policy priorities set out in accordance with Article 8 (4), the Agency shall provide technical and operational assistance to third countries within the framework of the external action policy of the Union, including with regard to the protection of fundamental rights and the principle of non-refoulement.
3. The Agency and 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.

#### *Article 73*

#### ***Cooperation of Member States with third countries***

1. For the purposes of this Regulation, Member States may continue cooperation at an operational level and exchange information with one or several third countries. Such cooperation and exchange of information shall take place on the basis of bilateral or multilateral agreements or through regional networks established on the basis of those agreements.
2. When concluding the bilateral and multilateral agreements referred to in paragraph 1, Member States shall include provisions concerning information exchange and cooperation in the framework of EUROSUR in accordance with Article 76.
3. The agreements referred to in paragraph 1 shall comply with Union and international law on fundamental rights and on international protection, including the Charter of Fundamental Rights of the European Union, the Convention for the Protection of Human Rights and Fundamental Freedom and the Convention Relating to the Status of Refugees, in particular the principle of non-refoulement. When implementing such agreements, also having regard to Article 8, Member States shall continuously assess and take into account the general situation in the third country.

#### *Article 74*

##### ***Cooperation between the Agency and third countries***

1. The Agency may cooperate with the authorities of third countries competent in matters covered by this Regulation and to the extent required for the fulfilment of its tasks.
2. When doing so, it shall act within the framework of the external action policy of the Union, including with regard to the protection of fundamental rights and the principle of non-refoulement, with the support of, and in coordination with, Union delegations and, where relevant, CSDP missions and operations.
3. In circumstances requiring the deployment of border management and return teams from the European Border and Coast Guard standing corps to a third country where the team members will exert executive powers, a status agreement shall be concluded by the Union with the third country concerned. The status agreement shall cover all aspects that are necessary for carrying out the actions. It shall in particular set out the scope of the operation, civil and criminal liability and the tasks and powers of the members of the teams. The status agreement shall ensure the full respect of fundamental rights during these operations.
4. Where available, it shall also act within the framework of working arrangements concluded with those authorities in accordance with Union law and policy, in accordance with 77(6). Those working arrangements shall specify the scope, nature and purpose of the cooperation and be related to the management of operational cooperation and may include provisions concerning the exchange of sensitive non-classified information and cooperation in the framework of EUROSUR in accordance with Article 75 (3). Any working arrangements on exchanging classified information shall be concluded in accordance with Article 77(6). The Agency shall comply with Union law, including norms and standards, which form part of the Union acquis.
5. The Agency shall contribute to the implementation of international agreements and of non-legally binding arrangements on return concluded by the Union with third countries within the framework of the external action policy of the Union and regarding matters covered by this Regulation.
6. The Agency may benefit from Union funding in accordance with the provisions of the relevant instruments supporting in and in relation to third countries. It may launch and finance technical assistance projects in third countries regarding matters covered by this Regulation and in accordance with the financial rules applicable to the Agency.
7. The Agency shall inform the European Parliament of activities conducted pursuant to this Article.
8. It shall include an assessment of the cooperation with third countries in its annual reports.

#### *Article 75*

##### ***Technical and operational assistance provided by the Agency to third Countries***

1. As provided for in Article 72 (3), in circumstances requiring increased technical and operational assistance, the Agency may coordinate operational cooperation between

Member States and third countries and provide operational support to third countries in the context of the European integrated border management.

2. The Agency shall have the possibility of carrying out actions at the external borders of a third country, subject to the agreement of that third country, including on the territory of that third country.
3. Operations shall be carried out on the basis of an operational plan agreed between the Agency and the third country concerned. In case of operations carried out at the common border between the third country and one or more Member States, the operational plan shall have the agreement of the Member State or Member States bordering the operational area. Operational plans may include provisions concerning information exchange and cooperation in the framework of EUROSUR in accordance with Article 76. Without prejudice to the deployment of the members of the European Border and Coast Guard standing corps in accordance with Articles 55 to 58, the participation of Member States in joint operations on the territory of third countries shall be on voluntary basis.
4. The Agency may provide assistance to return activities of third countries and ensure the coordination or the organisation of return operations, during which a number of returnees are returned from this third country to another third country. Such return operations may be organised with participation of one or more Member States ('mixed return operations') or as national return operations, in particular when this is justified by the priorities of the irregular migration policy of the Union. The participating Member States and the Agency shall ensure that the respect of fundamental rights and the proportionate use of means of constraints are guaranteed during the whole removal operation, notably with the presence of forced return monitors and of third-country forced return escorts.

#### *Article 76*

#### ***Information exchange with third Countries in the framework of EUROSUR***

1. The national coordination centres of the Member States and, when relevant, the Agency shall be the contact points for the exchange of information and cooperation with third countries in the framework of EUROSUR.
2. The provisions for the exchange of information in the framework of EUROSUR referred to in Article 72 (2) shall detail:
  - (a) the specific situational pictures shared with third countries;
  - (b) the data originating from third countries which can be shared in the European Situational Picture and the procedures for sharing these data;
  - (c) the procedures and conditions by which EUROSUR Fusion Services can be provided to third countries' Authorities;
  - (d) the modalities of cooperation and information exchange with third countries observers for the purpose of EUROSUR.
3. Information provided in the context of EUROSUR by the Agency or by a Member State which is not party to an agreement as referred to in paragraph 1 of Article 73 shall not be shared with a third country under that agreement without the prior approval of the Agency or of that Member State. The Member States and the Agency

shall be bound by the refusal to share that information with the third country concerned.

#### *Article 77*

##### ***Role of the Commission with regard to cooperation with third countries***

1. The Commission shall negotiate the status agreement referred to in Article 74 (3) in accordance with Article 218(3) TFEU.
2. The Commission, after consulting the Member States and the Agency, shall draw up model provisions for the bilateral and multilateral agreements referred to in Article 71(2) and Article 73 for the exchange of information in the framework of EUROSUR as provided for in Article 76 (2).

The Commission, after consulting the Agency, shall draw up a model for the working arrangements referred to in Article 74.

3. The Member States concerned shall notify existing bilateral and multilateral agreements referred to in Article 73 (1) to the Commission, which shall verify whether their provisions comply with this Regulation.
4. Before a new bilateral or multilateral agreement referred to in Article 73 (1) is concluded, the Member State(s) concerned shall notify it to the Commission, which shall verify whether its provisions comply with this Regulation and inform the Member State accordingly.
5. Once a new agreement is concluded, the Member State concerned shall notify it to the Commission, which shall inform the European Parliament, the Council and the Agency thereof.
6. Before any working arrangements with third parties or third countries are concluded, the Agency shall notify them to the Commission, which shall give its prior approval. Once working arrangements are concluded, the Agency shall notify them to the Commission, which shall inform the European Parliament and the Council thereof.
7. The Agency shall notify the operational plans referred to in Article 75 (3) to the Commission. The decision to deploy liaison officers to third countries in accordance with Article 78 shall be subject to receiving the prior opinion of the Commission. The European Parliament shall be kept fully informed of those activities without delay.

#### *Article 78*

##### ***Liaison officers of the Agency in third countries***

1. The Agency may deploy experts from its statutory staff as liaison officers, who should enjoy the highest possible protection when carrying 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 Regulation (EC) No 377/2004. By decision of the management board the Agency may lay down specific profiles of liaison officers, such as return liaison officers, depending on the operational needs with regard to the third country concerned.
2. Within the framework of the external action policy of the Union, priority for the deployment of liaison officers shall be given to those third countries which, on the



basis of a risk analysis, constitute a country of origin or transit regarding illegal immigration. The Agency may receive liaison officers posted by those third countries on a reciprocal basis. The management board shall, on a proposal of the executive director, adopt the list of priorities on a yearly basis. The deployment of liaison officers shall be approved by the management board upon the opinion of the Commission.

3. The tasks of the Agency's liaison officers shall include, in compliance with Union law and respecting 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 returnees, including by providing technical assistance in identification of third-country nationals and the acquisition of travel documents. Those liaison officers shall coordinate closely with Union delegations and, where relevant, CSDP missions and operations.

#### *Article 79*

#### *Observers participating in the Agency's activities*

1. The Agency may, with the agreement of the Member States concerned, invite observers of Union institutions, bodies, offices, agencies or international organisations and CSDP missions and operations 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 shall be subject to the agreement of the host Member State. Detailed rules on the participation of observers shall be included in the operational plan. Those observers shall receive appropriate training from the Agency prior to their participation.
2. The Agency may, 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 37 , return operations referred to in Article 51, return interventions referred to in Article 54 and training referred to in Article 62, 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 37, 43, 51 and 62 and only with the agreement of the host Member State regarding those referred to in Articles 37 and 54. Detailed rules on the participation of observers shall be included in the operational plan. Those observers shall receive appropriate training from the Agency prior to their participation. They shall be required to adhere to the codes of conduct of the Agency while participating in its activities.

## **CHAPTER III**

### **False and Authentic Documents Online (FADO)**

#### *Article 80*

1. The Agency shall take over and operate False and Authentic Documents Online (FADO) which is a database that shall contain information on genuine travel and residence documents issued by Member States, third countries, territorial entities, international organisations and other entities subjects of international law and on falsifications thereof. The FADO system shall not contain any personal data.

The Member States shall transmit the data currently in FADO to the new system.

2. The Commission shall adopt implementing acts in accordance with the procedure referred to in Article 117(2) in order to:
  - (a) establish the technical specifications of FADO according to high standards;
  - (b) set up the procedures for controlling and verifying the information contained in FADO.

## **CHAPTER IV**

### **General provisions**

#### *SECTION I*

#### *GENERAL RULES*

#### *Article 81*

#### *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, 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 performing 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. In performing of its tasks the European Border and Coast Guard shall 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 performing 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 referred to in Article 70 and the fundamental rights officer.

#### *Article 82*

##### ***Code of conduct***

1. The Agency shall, in cooperation with the consultative forum, draw up and further develop a code of conduct applicable to all border control operations coordinated by the Agency and all persons participating in the activities of 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.
2. The Agency shall, in cooperation with the consultative forum, draw up and further develop a code of conduct for the return of returnees, 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, the 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.

#### *Article 83*

##### ***Tasks and powers of the members of the teams***

1. Members of the teams deployed from the European Border and Coast Guard standing corps 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](#).
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. Without prejudice to Article 94(1) as regards statutory staff of the Agency, 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 deployed from the Agency's statutory operational staff or deployed following secondment for a long-term duration to the Agency by the

Member States shall wear, where appropriate, the uniform of the European Border and Coast Guard standing corps while performing their tasks and exercising their powers. Members of the teams deployed from Member States for a short duration shall wear, where appropriate, their own uniform while performing their tasks and exercising their powers.

All the members of the teams shall also wear visible personal identification and a blue armband with the insignias of the Union and of the Agency on their uniforms, identifying them as participating in a joint operation, migration management support team deployment, 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.

The design and specifications for uniforms of the European Border and Coast guards standing corps shall be established by a Commission implementing decision adopted in accordance with the examination procedure referred to in Article 117(3).

5. While performing their tasks and exercising their powers, members of the teams may carry service weapons, ammunition and equipment.

For staff seconded to the Agency, whether for a short or long-term duration, the carrying and use of service weapons, ammunition and equipment shall be subject to the home Member State's national law.

The carrying and use of service weapons, ammunition and equipment by the Agency's statutory operational staff shall be subject to the framework and detailed rules laid down in Annex V.

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 or, for the Agency's staff with the consent of the Agency, 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 or the Agency where appropriate 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 the consultation of which is necessary for

fulfilling operational aims specified in the operational plan on border checks, border surveillance and return. The host Member State may also authorise them to consult its national databases where necessary for the same purpose. 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 data protection law and the national data protection law of the host Member State.

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 84*

#### ***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 tasks and exercise powers as referred to in Article 83. 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 a joint operation, migration management support team deployment, pilot project, rapid border intervention, return operation or return intervention.

#### *Article 85*

#### ***Civil liability***

1. Without prejudice to Article 94, 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 wilful 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. Likewise if the damage is caused by gross negligence or wilful misconduct by the staff of the Agency, the host Member State may approach the Agency in order to have any sums it has paid to the victims or persons entitled on their behalf reimbursed by the Agency.

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 wilful misconduct.
4. Any dispute between Member States relating to the application of paragraphs 2 and 3 of this Article 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 wilful misconduct.

#### *Article 86*

#### ***Criminal liability***

Without prejudice to Article 94 during a joint operation, pilot project, migration management support team deployment, 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***

#### ***PROCESSING OF PERSONAL DATA BY THE AGENCY***

#### *Article 87*

#### ***General rules on processing of personal data by the Agency***

1. The Agency shall apply [Regulation (EC) No 45/2001] when processing personal data.
2. The management board shall take the necessary administrative measures to apply [Regulation (EC) No 45/2001] by the Agency, including those concerning the data protection officer of the Agency.
3. The Agency may transfer personal data to an authority of a third country or to an international organisation in accordance with the provisions of [Regulation (EC) No 45/2001] insofar as such transfer is necessary for the performance of the Agency's tasks in the area of return activities. Where in the framework of organising return operations the personal data of returnees are not transmitted to the carrier by a Member State, the Agency may also transfer such data under the same conditions. In application of [Article 25(1)(c)] of [Regulation (EC) No 45/2001], [Article 19] thereof shall not apply to the processing of data for the purpose of return by the Agency, for as long as the third country national is not returned. The Agency may provide for internal rules on restricting the application of the rights under [Articles 17 and 18] of [Regulation (EC) No 45/2011] on a case by case basis as long as the exercise of such right would risk to jeopardise the return procedure.

## Article 88

### ***Purposes of processing of 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;
  - (b) performing its tasks of supporting Member States and third countries in pre-return and return activities, operating return management systems, as well as coordinating or organising return operations and providing technical and operational assistance to Member States and third countries in accordance with Article 49;
  - (c) facilitating the exchange of information with Member States, EASO, Europol or Eurojust in accordance with Article 89;
  - (d) risk analysis by the Agency in accordance with Article 30;
  - (e) identifying and tracking vessels in the framework of EUROSUR in accordance with Article 90;
  - (f) administrative tasks.
2. A Member State or other Union agency providing personal data to the Agency shall determine the purpose or the purposes for which those data 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 provider of the personal data
3. Member States and other Union agencies may indicate, at the moment of transmitting personal data, any restrictions on access to those data or use of them, in general or specific terms, including as regards their transfer, erasure or destruction. Where the need for such restrictions becomes apparent after the transfer of personal data, they shall inform the Agency accordingly. The Agency shall comply with such restrictions

## Article 89

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

1. The Agency shall only process the following categories of personal data collected and transmitted to it by the Member States, by its staff or by EASO, Europol or Eurojust in the context of joint operations, pilot projects and rapid border interventions, and by migration management support teams:
  - (a) personal data of persons who are suspected, on reasonable grounds, by the competent authorities of the Member States and EASO, Europol or Eurojust, of involvement in cross-border crime, such as migrant smuggling, trafficking in human beings or terrorism;

- (b) personal data of persons who cross the external borders without authorisation and whose data is collected by the Agency's 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 crime.
2. Personal data referred to in paragraph 1 may be processed by the Agency in the following cases:
- (a) where exchange of information with EASO, Europol or Eurojust is necessary for use in accordance with their respective mandates and in accordance with Article 69;
  - (b) where transmission to the authorities of the relevant Member States which are responsible for border control, migration, asylum, returns is necessary for fulfilling their tasks in accordance with Union and national legislation;
  - (c) where transmission to the authorities of relevant Member States, third countries of return or international organisations is necessary for the purpose of identification of third country nationals, acquisition of travel documents, enabling or supporting return;
  - (d) where necessary for the preparation of risk analyses.
  - (e) in specific cases, where the Agency becomes aware that personal data processed in the fulfilment of its tasks is strictly necessary to law enforcement authorities for the purposes of preventing, detecting, investigating or prosecuting serious crime
3. Personal data shall be deleted as soon as they have been transmitted to EASO, 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 results of risk analyses, data shall be anonymised. The provisions of this paragraph shall not apply to data processed for the purpose of performing return-related tasks.

#### *Article 90*

#### ***Processing of personal data in the framework of EUROSUR***

1. Where the national situational picture requires the processing of personal data, those data shall be processed in accordance with the relevant Union and national provisions on data protection. Each Member State shall designate the authority which is to be considered as controller in accordance with Article 4(7) of Regulation (EU) 2016/679 and which shall have central responsibility for the processing of data by that Member State. Each Member State shall notify the details of that authority to the Commission.
2. Ship and aircraft identification numbers are the only personal data that can be processed in the European situational and specific situational pictures.



3. Any exchange of personal data with third countries in the framework of EUROSUR shall be strictly limited to what is absolutely necessary for the purposes of this Regulation. It shall be carried out in accordance with Regulation (EU) 2016/679, and the relevant national provisions on data protection.
4. Any exchange of information under Article 73(2), Article 74(3) and Article 75(3) which provides a third country with information that could be used to identify persons or groups of persons whose request for access to international protection is under examination or who are under a serious risk of being subjected to torture, inhuman and degrading treatment or punishment or any other violation of fundamental rights, shall be prohibited.
5. Onward transmission or other communication of information exchanged under Article 73(2), Article 74(3) and Article 75(3) to other third countries or to third parties shall be prohibited.

#### *Article 91*

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

1. The Agency shall adopt its own security rules based on the principles and rules laid down in Commission's security rules for protecting European Union Classified Information (EUCI) and sensitive non-classified information including inter alia provisions for the exchange with third states, processing and storage of such information as set out in Commission Decisions (EU, Euratom) 2015/443 and 2015/444. Any administrative arrangement on the exchange of classified information with the relevant authorities of a third State or, in the absence of such arrangement, any exceptional ad hoc release of EUCI to those authorities shall have received the Commission's prior approval.
2. The security rules shall be adopted by the Management Board following approval by the Commission.
3. 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 be approved by the Commission .

### ***SECTION 3***

#### ***GENERAL FRAMEWORK AND ORGANISATION OF THE AGENCY***

#### *Article 92*

#### ***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 implementing its technical and operational mandate.
4. The Agency shall be represented by its executive director.

5. The seat of the Agency shall be Warsaw, Poland.

#### *Article 93*

##### ***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 directors, 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.
3. The Member State in which the Agency has its seat shall provide the best possible conditions to ensure the proper functioning of the Agency, including multilingual, European-oriented schooling and appropriate transport connections.

#### *Article 94*

##### ***Staff***

1. The Staff Regulations of Officials of the European Union ('Staff Regulations') and the Conditions of Employment of Other Servants of the Union ('Conditions of Employment'), laid down in Council Regulation (EEC, Euratom, ECSC) No 259/68<sup>44</sup>, and the rules adopted in agreement between the institutions of the Union for giving effect to those Staff Regulations and the Conditions of Employment shall apply to the statutory staff.
2. The place of employment shall in principle be fixed in the Member State where the Agency's seat is located.
3. Staff members subject to the Conditions of Employment shall in principle be initially engaged for a fixed period of five years. Their contracts may in principle be renewed only once, for a fixed period of maximum five years. Any further renewal shall be for an indefinite period.
4. The Management Board may grant a monthly differential payment to Agency statutory staff members. This differential payment shall be calculated as a percentage of the remuneration of each staff member concerned. That percentage shall not exceed the difference between 100% and the correction coefficient applicable in the place of employment and shall regularly be reviewed. Before granting this benefit, due account shall be taken of the overall remuneration received by individual staff members, including reimbursements of mission expenses.

The Management Board shall lay down the rules for implementing this paragraph, with prior approval of the Commission. By 2024, the Management Board shall review these rules, with prior approval of the Commission.

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<sup>44</sup> OJ L 56, 4.3.1968, p. 1, as last amended by Regulation (EU, Euratom) No 1023/2013 of the European Parliament and of the Council of 22 October 2013 (OJ L 287, 29.10.2013, p.15).

5. For the purpose of implementing 32, Article 45 and Article 53 (2), only a staff member of the Agency subject to the Staff Regulations or to Title II of the Conditions of Employment may be appointed as a coordinating officer or a liaison officer. For the purpose of implementing Article 56 only a staff member of the Agency subject to the Staff Regulations or of the Conditions of Employment may be deployed as team member.
6. The management board shall adopt implementing rules for giving effect to the Staff Regulations and Conditions of Employment in agreement with the Commission pursuant to Article 110(2) of the Staff Regulations.
7. Following prior approval by the Commission, the management board shall adopt, rules related to operational staff from Member States to be seconded to the Agency in accordance with Article 57 and update them as necessary. Those provisions shall take into account the fact that the operational staff are seconded to be deployed as members of the teams and have the tasks and powers provided for in Article 83. They shall include provisions on the conditions of deployment. Where relevant, the Management Board shall aim at ensuring consistency with the rules applicable to reimbursement of mission expenses of the statutory staff.

#### *Article 95*

#### ***Privileges and immunities***

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

#### *Article 96*

#### ***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 of the European Union shall have jurisdiction in disputes relating to compensation for the damage referred to in paragraph 3.
5. The personal liability of the Agency's staff towards it shall be governed by the provisions laid down in the Staff Regulations and Conditions of Employment applicable to them.

#### *Article 97*

#### ***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;

- (c) deputy executive directors;
- (d) consultative forum;
- (e) a fundamental rights officer.

#### *Article 98*

#### ***Functions of the management board***

1. The management board shall be responsible for taking the strategic decisions of the Agency in accordance with this Regulation.
2. The management board shall:
  - (a) appoint the executive director on a proposal from the Commission in accordance with Article 105;
  - (b) appoint the deputy executive directors on a proposal from the Commission in accordance with Article 105;
  - (c) adopt a decision to set up an antenna office or to prolong its duration in accordance with Article 60(6);
  - (d) adopt decisions on conducting the vulnerability assessment in accordance with Article 33 (1) and (9), with the decisions setting out measures adopted under Article 33 (9) being passed by a two-thirds majority of the members with a right to vote;
  - (e) adopt decisions on the lists of mandatory information and data to be exchanged with the Agency by the national authorities responsible for border management and return to enable the Agency to perform its tasks;
  - (f) adopt decisions on the establishment of a common integrated risk analysis model in accordance with Article 30 (1);
  - (g) adopt decisions on the nature and terms of the deployment of liaison officers in Member States in accordance with Article 32 (2);
  - (h) adopt a technical and operational strategy for the European Integrated Border Management in accordance with Article 8 5(5);
  - (i) adopt a decision on the profiles and the numbers of operational staff for the management of borders and migration within the European Border and Coast Guard standing corps, in accordance with Article 55(4);
  - (j) 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, to the Council, to the Commission and to the Court of Auditors;
  - (k) before 30 November each year, and after duly taking into account the opinion of the Commission, adopt, by a two-thirds majority of the members with a right to vote, a single programming document containing, inter alia, the Agency's

multiannual programming and its work programme for the following year and forward it to the European Parliament, to the Council and to the Commission;

- (l) establish procedures for the executive director to take decisions relating to the technical and operational tasks of the Agency;
- (m) adopt, by a two-thirds majority of the members with a right 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;
- (n) exercise disciplinary authority over the executive director and over the deputy executive directors, in agreement with the executive director;
- (o) establish its rules of procedure;
- (p) establish the organisational structure of the Agency and adopt the Agency's staff policy;
- (q) adopt an anti-fraud strategy, proportionate to the risk of fraud, taking into account the costs and benefits of the measures to be implemented;
- (r) adopt internal rules for the prevention and management of conflicts of interest in respect of its members;
- (s) exercise, in accordance with paragraph 8, with respect to the staff of the Agency, the powers conferred by the Staff Regulations on the Appointing Authority and by the Conditions of Employment on the Authority Empowered to Conclude a Contract of Employment ('the Appointing Authority powers');
- (t) adopt implementing rules for giving effect to the Staff Regulations and the Conditions of Employment in accordance with Article 110(2) of the Staff Regulations;
- (u) 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 OLAF;
- (v) adopt and regularly update the communication and dissemination plans referred to in the second subparagraph of Article 10 (2);
- (w) appoint an accounting officer, subject to the Staff Regulations and the Conditions of Employment, who shall be totally independent in the performance of his or her duties;
- (x) decide on a common vulnerability assessment methodology, including the objective criteria against which the Agency shall carry out the vulnerability assessment, the frequency of such assessments and how consecutive vulnerability assessments are to be carried out;
- (y) decide on enhanced assessment and monitoring of a Member State as referred to in Article 33 (2);
- (z) appoint the fundamental rights officer in accordance with Article 107(1);

- (aa) approve the working arrangements with third countries;
- (bb) adopt, after the prior approval of the Commission, the security rules of the Agency on protecting EU classified information and sensitive non-classified information as referred to in Article 91;
- (cc) appoint a security officer, subject to the Staff Regulations and the Conditions of Employment, who shall be responsible for the security within the Agency, including for the protection of sensitive and classified information.

The annual activity report referred to in point (j) shall be made public.

3. Proposals for decisions of the management board as referred to in paragraph 2 on specific activities of the Agency to be carried out at, or in the immediate vicinity of, the external borders 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.
4. 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.
5. 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.

6. The management board shall forward annually to the European Parliament and the Council ('the budgetary authority') any information relevant to the outcome of the evaluation procedures conducted by the Agency.
7. The management board may establish an executive board composed of up to four representatives of the Management Board, including its Chairperson, and a representative of the Commission, 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 to take certain provisional, urgent decisions on behalf of the management board when necessary. The executive board shall not take decisions that must be passed by either a two-thirds or three-quarters majority of the management board. The management board may delegate certain clearly defined tasks to the executive board, in particular where this improves the efficiency of the Agency. It may not delegate to the executive board tasks related to decisions that must be passed by either a two-thirds or three-quarters majority of the management board.
8. 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 and on Article 6 of the Conditions of Employment, delegating relevant appointing-authority powers to the executive director and setting out 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. It may then exercise them itself or delegate them to one of its members or to a staff member other than the executive director.

#### *Article 99*

##### ***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 a right to vote. 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 and their relevant managerial, administrative and budgetary skills. Member States and the Commission shall aim to achieve a gender balanced representation 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 on the management board. The arrangements developed under the relevant provisions of their association agreements, 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, shall apply.

#### *Article 100*

##### **Multiannual programming and annual work programmes**

1. The management board shall, by 30 November each year, adopt a final programming document containing inter alia the Agency's multiannual programming and annual programming for the following year, based on a draft put forward by the executive director and endorsed by the management board. The final programming document shall be adopted after a positive opinion of the Commission, as regards the multiannual programming, after having consulted the European Parliament. If the Agency decides not to take into account elements of the opinion of the Commission, it shall provide a thorough justification. The management board shall forward the document to the European Parliament, to the Council and to the Commission.
2. The document referred to in paragraph 1 shall become definitive after the final adoption of the general budget. It shall be adjusted accordingly where necessary.
3. The multiannual programming shall set out overall strategic programming in the medium and long term, including objectives, expected results, performance indicators and resource planning, including the multiannual budget, staff and the development of the Agency's own capabilities. The multiannual programming shall set out the strategic areas of intervention 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 an evaluation conducted pursuant to Article 116. 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 with 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 the 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, especially the modification resulting in a reallocation of the budgetary resources above 2% of the annual budget, be adopted by the same procedure as that applicable to adoption of the initial annual work programme. The management board may delegate to the executive director the power to make non-substantial amendments to the annual work programme.

#### *Article 101*

##### ***Chairmanship of the management board***

1. The management board shall elect a chairperson and a deputy chairperson from among its members with a right to vote. The chairperson and the deputy chairperson shall be elected by a two-thirds majority of the members of the management boards with a right to vote. 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 terms of office of the chairperson or deputy chairperson shall be four years. These terms of office shall be extendable once.

#### *Article 102*

##### ***Meetings of the management board***

1. Meetings of the management board shall be convened by its chairperson.
2. The executive director 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. When necessary, the management



board may hold joint meetings with the management board of the European Union Agency for Asylum and EUROPOL.

4. Ireland shall be invited to attend the meetings of the management board.
5. The United Kingdom shall be invited to attend the meetings of the management board taking place before the date of withdrawal of the United Kingdom from the Union.
6. Representatives of the European Union Agency for Asylum and EUROPOL shall be invited to attend the meetings of the Management Board. The management board may also invite a representative of relevant Union institutions, bodies, offices and agencies.
7. 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.
8. The members of the management board may, subject to the provisions of its rules of procedure, be assisted by advisers or experts.
9. The secretariat for the management board shall be provided by the Agency.

### *Article 103*

#### *Voting*

1. Without prejudice to Article 55(4), points (3), (9) and (13) of Article 98(2), Article 100(1) and Article 105(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 set out the voting arrangements in greater detail. Those rules shall include the conditions for a member to act on behalf of another member as well as any quorum requirements.
4. Representatives of countries associated with the implementation, application and development of the Schengen acquis shall have limited voting rights corresponding to their 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 104*

#### *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. This includes reporting 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 also make a statement before the European Parliament, if requested and report to it regularly.

3. The executive director shall be responsible for the preparation and implementation of the strategic decisions taken by the management board and for the taking of decisions related to the operational activities of the Agency in accordance with this Regulation. 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 management board within the limits set out in 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 this Regulation;
  - (c) to prepare each year the draft single programming document and to submit it to the management board for endorsement before it is sent to the Institutions by 31 January;
  - (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 as part of the single programming document pursuant to Article 111, and implement the budget pursuant to Article 112;
  - (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 98(2) point 15;
  - (g) to adopt a recommendation on measures in accordance with Article 33(9), including decisions proposing that Member States initiate and carry out joint operations, rapid border interventions or other action referred to in Article 37(2);
  - (h) to evaluate, approve and coordinate proposals made by Member States for joint operations or rapid border interventions in accordance with Article 38(3);
  - (i) to evaluate, approve and coordinate requests made by Member States for joint return operations and return interventions in accordance with Articles 51 and 54;
  - (j) to ensure the implementation of the operational plans referred to in Article 39, Article 43 and Article 54(4);
  - (k) 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 41(3);

- (l) to ensure the implementation of the Commission decision referred to in Article 43(1);
  - (m) to withdraw financing of activities in accordance with Article 47;
  - (n) to evaluate the results of activities in accordance with Article 48;
  - (o) to identify the minimum number of items of technical equipment required to meet the Agency's needs, in particular as regards carrying out joint operations, migration management support team deployments, rapid border interventions, return operations and return interventions, in accordance with Article 64(5);
  - (p) to propose the establishment of an antenna office or the prolongation of its duration in accordance with Article 60(6);
  - (q) to appoint the heads of the antenna offices in accordance with Article 60(4);
  - (r) to prepare an action plan following up on the conclusions of internal or external audit reports and evaluations, as well as investigations by the OLAF and to report on progress twice a year to the Commission and regularly to the management board;
  - (s) 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 imposing effective, proportionate and dissuasive administrative and financial penalties;
  - (t) 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 105*

##### ***Appointment of the executive director and the deputy executive directors***

1. The Commission shall propose at least three candidates for the post of executive director and for the posts of each of the deputy executive directors based on a list following publication of the post in the Official Journal of the European Union and, as appropriate, other press or internet sites.
2. The executive director shall be appointed by the management board on the grounds of merit and documented high-level administrative and management skills, including relevant senior professional experience in the field of management of the external-borders and return, on the proposal from the Commission referred to in paragraph 1. 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.

Following such a 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 the opinion of the European Parliament 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 three deputy executive directors. Each deputy executive director shall be assigned a specific area of responsibility. If the executive director is absent or indisposed, one of the deputy executive directors shall take his or her place.
4. The deputy executive directors shall be appointed by the management board on the grounds of merit and appropriate administrative and management skills, including relevant professional experience in the field of management of the external borders and return, on the proposals from the Commission referred to in paragraph 1, after having consulted the executive director. The management board shall take its decision by a two-thirds majority of all members with a right to vote.

The management board shall have the power to dismiss the deputy executive directors in accordance with the procedure set out in the first subparagraph.

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 another period of up to five years.
7. The term of the office of the deputy executive directors shall be five years. It may be extended by the management board once, for another period of up to five years.
8. The executive director and the deputy executive directors shall be engaged as temporary agents of the Agency under Article 2(a) of the Conditions of Employment of Other servants.

#### *Article 106*

#### ***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 of the consultative

forum and the terms 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 establishment of the complaints mechanism, on codes of conduct and on 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-the-spot visits to joint operations or rapid border interventions subject to the agreement of the host Member State, and to hotspot areas or controlled centres, return operations and return interventions.

#### *Article 107*

##### ***Fundamental rights officer***

1. A fundamental rights officer shall be appointed by the management board. He or she shall have the tasks of contributing to the Agency's fundamental rights strategy, of monitoring its compliance with fundamental rights and of promoting its respect for fundamental rights. The fundamental rights officer 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. He or she shall report directly to the management board and cooperate with the consultative forum. The fundamental rights officer shall so 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 39, 43, 54(4) and 75(3). He or she shall have access to all information concerning respect for fundamental rights in all the activities of the Agency.

#### *Article 108*

##### ***Complaints mechanism***

1. The Agency shall, in cooperation with the fundamental rights officer, take the necessary measures to set up a complaints 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 team deployment, joint 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.
5. 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.

6. 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 made by the Agency in response 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.

7. If a complaint is registered that concerns a team member of a host Member State or a team member from other participating Member States, including a seconded member of the teams or seconded national expert, 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 made in response to the 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.
8. Where a team member is found to have violated fundamental rights or international protection obligations, the Agency may request that the Member State remove that member immediately from the activity of the Agency or the European Border and Coast Guard standing corps.
9. The fundamental rights officer shall report to the executive director and to the management board as to the Agency's and Member States' findings and follow-up made in response to complaints. The Agency shall include information on the complaints mechanism in its annual report.
10. The fundamental rights officer shall, in accordance with the provisions set out in paragraphs 1 to 9 and after consulting the consultative forum, draw up a standardised complaint form requiring detailed and specific information concerning the alleged breach of fundamental rights. The fundamental rights officer shall also draw up any further detailed rules as necessary. The fundamental rights officer shall submit that

form and such further detailed rules 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 on the Agency's website and in hardcopy during all activities of the Agency, in languages that third-country nationals understand or are reasonably believed to understand. Complaints shall be considered by the fundamental rights officer even when they are not submitted in the standardised complaint form.

11. 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 Regulation (EU) 2016/679 and Directive (EU) 2016/680.

When a complainant submits a complaint, that complainant shall be understood to consent to the processing of his or her personal data by the Agency and the fundamental rights officer within the meaning of point (d) of Article 5 of [Regulation (EC) No 45/2001].

In order to safeguard the interests 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. When complainants waive their right to confidentiality, it shall be understood that they consent to the fundamental rights officer or the Agency disclosing their identity to the competent authorities or bodies in relation to the matter under complaint, where necessary.

#### *Article 109*

##### ***Language arrangements***

1. The provisions laid down in Regulation No 1<sup>45</sup> 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 points (10) and (11) of Article 98(2) 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 bodies of the European Union.

#### *Article 110*

##### ***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.
2. The Agency shall communicate on matters falling within the scope of its tasks on its own initiative. It shall make public relevant information including the annual activity report referred to in point (10) of Article 98(2) and ensure, without prejudice to Article 91, in particular that the public and any interested party are rapidly given

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<sup>45</sup> Regulation N° 1 of 15 April 1958 determining the languages to be used by the European Economic Community (OJ 17.6.10.1958, p.385).

objective, comprehensive, reliable and easily understandable information with regard to its work. It shall do so 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 written correspondence 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 a complaint being lodged with the European Ombudsman or to 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 111*

#### **Budget**

1. The revenue of the Agency shall consist, without prejudice to other types of income, of:
  - (a) a contribution 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 their financial contribution;
  - (c) Union funding in the form of contribution agreements or ad-hoc grants in accordance with the Agency's financial rules referred to in Article 115 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 its administrative, infrastructure, operational and staff-related 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 balanced.
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. The management board shall forward them to the European Parliament, to the Council and to the Commission by 31 January every year, as part of the draft single programming document.



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 to the Commission by 31 March every year.
7. The estimate shall be forwarded by the Commission to 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 contribution 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 appropriations for the contribution to the Agency.
10. The budgetary authority shall adopt the establishment plan for the Agency.
11. The management board adopts the Agency's budget. It shall become final following final adoption of the general budget of the European Union. Where appropriate, it shall be adjusted accordingly.
12. Any modification to the budget, including the establishment plan, shall follow the same procedure.
13. For any building project likely to have significant implications for the budget of the Agency, the provisions of Commission Delegated Regulation (EU) No 1271/2013<sup>46</sup> shall apply.
14. To finance 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 2 % of the allocation foreseen jointly for the joint operations at the external border and operational activities in the area of return. After the end of each month, the Executive Director may decide to reallocate a sum equivalent to one twelfth of the appropriations of the reserve to other operational activities of the Agency. In such case, the Executive director shall inform the Management Board.
15. Budgetary commitments for actions extending over more than one financial year may be broken down over several years into annual instalments.

#### *Article 112*

#### ***Implementation and control of the budget***

1. The executive director shall implement the Agency's budget.
2. By 1 March of a financial year N + 1, the Agency's accounting officer shall communicate the provisional accounts for the financial 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

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<sup>46</sup> 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).

bodies in accordance with Article 147 of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council<sup>47</sup>.

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.
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 (EU, 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, the executive director shall send the final accounts, together with the opinion of the management board, to the European Parliament, to the Council, to the Commission and to the Court of Auditors.
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. He or she 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 (EU, 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 in respect of the implementation of the budget for the year N.

### *Article 113*

#### ***Combating fraud***

1. In order to combat fraud, corruption and other illegal activities, the provisions of Regulation (EU, Euratom) No 883/2013 shall apply without restriction. The Agency shall accede to the Interinstitutional 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 of on-the-spot inspections, over all grant beneficiaries, contractors and subcontractors who have received Union funds from the Agency.

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<sup>47</sup> 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) N° 1605/2008 (OJ L 298, 26.10.2012, p.1).

3. OLAF may carry out administrative investigations, including on-the-spot checks and inspections, in accordance with the provisions and procedures laid down in Regulation (EU, Euratom) No 883/2013 and Council Regulation (Euratom, EC) No 2185/96<sup>48</sup> 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 agreement or grant decision or a contract funded by the Agency.
4. In accordance with Regulation (EU) 2017/1939, the European Public Prosecutor's Office (EPPO) may investigate and prosecute fraud and other illegal activities affecting the financial interests of the Union as provided for in Directive (EU) 2017/1371 of the European Parliament and of the Council.
5. Without prejudice to paragraphs 1, 2, 3 and 4, working arrangements with third countries and with international organisations, contracts, grant agreements and grant decisions of the Agency shall contain provisions expressly empowering the Court of Auditors, the European Public Prosecutor's Office and OLAF to conduct such audits and investigations, in accordance with their respective competences.

#### *Article 114*

#### ***Prevention of conflicts of interest***

The Agency shall adopt internal rules requiring the members of its bodies and its 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 115*

#### ***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. In this framework, the management board shall adopt specific financial rules applicable to the Agency's activities in the area of cooperation with third countries in the field of return.

## **CHAPTER IV**

### **Final provisions**

#### *Article 116*

#### ***Evaluation***

1. By [31 May 2023] and every four years thereafter, the Commission shall carry-out an evaluation of this Regulation. The evaluation will assess in particular:
  - (a) the results achieved by the Agency having regard to its objectives, mandate and tasks;

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<sup>48</sup> Council Regulation (Euratom, EC) No 2185/96 of 11 November 1996 concerning on-the-spot checks and inspections carried out by the Commission in order to protect the European Communities' financial interests against fraud and other irregularities (OJ L 292, 15.11.1996, p. 2).

- (b) the impact, effectiveness and efficiency of the Agency's performance and its working practices in relation to its objectives, mandate and tasks;
- (c) the implementation of European cooperation on coast guard functions;
- (d) the possible need to modify the mandate of the Agency;
- (e) the financial implications of any such modification.

The evaluation shall include a specific analysis on the way the Charter and other relevant Union law has been 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, to the Council and to 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. The Member States and the Agency shall provide the Commission with the information necessary to draft this report.
3. The Agency shall submit a report to the European Parliament and to the Council on the functioning of EUROSUR by 1 December 2021 and every two years thereafter. Member States shall provide the Agency with the information necessary to draft this report.
4. As part of the evaluation referred to in paragraph 1, the Commission shall provide an overall evaluation of EUROSUR accompanied, where necessary, by appropriate proposals to improve its functioning.

The Member States and the Agency shall provide the Commission with the information necessary to produce the evaluation referred to in paragraph 3.

#### *Article 117*

##### ***Committee procedure***

1. The Commission shall be assisted by a committee ("the European Board and Coast Guard Committee"). That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.  
For the measures referred to in Article 80(2), the Commission shall be assisted by the "Article 6 Committee" established by Regulation (EC) No 1606/2002.
2. Where reference is made to this paragraph, Article 4 of Regulation (EU) No 182/2011 shall apply.
3. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.
4. Where reference is made to this paragraph, Article 8 of Regulation (EU) No 182/2011, in conjunction with Article 5 thereof, shall apply.

#### *Article 118*

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

1. The power to adopt delegated acts shall be conferred on the Commission subject to the conditions laid down in this Article.

2. The power to adopt delegated acts referred to in Article 8 (4) shall be conferred on the Commission for an undetermined period of time from [*the date of entry into force of this Regulation*].
3. The delegation of power referred to in Article 8 (4) may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.
4. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement on Better Law-Making of 13 April 2016.
5. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.
6. A delegated act adopted pursuant to Article 8(4) shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.

#### *Article 119*

##### ***Repeal***

1. Regulation (EU) No 1052/2013 is repealed.
2. Regulation (EU) 2016/1624 is repealed with the exception of Articles 20, 30 and 31 thereof which are repealed with effect from 1 January 2020.
3. Joint Action 98/700/JHA is repealed with effect from the date of the effective implementation of the system referred to in Article 80, to be decided by an implementing act adopted in accordance with the procedures referred to in the Article 117.
4. References to the repealed acts shall be construed as references to this Regulation and shall be read in accordance with the correlation table set out in Annex VI to this Regulation.

#### *Article 120*

##### ***Entry into force and applicability***

1. This Regulation shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.
2. Article 12(4), 71 and 98 (5), as far as they concern the cooperation with the United Kingdom, shall be applicable until the date of withdrawal of the United Kingdom from the Union or, provided an agreement between the Union and the United

Kingdom based on Article 50 of the Treaty on European Union enters into force, until the end of the transition period set therein.

3. By way of derogation during the year 2019, the decisions referred to Article 55 (4) and 64 (6) shall be adopted by the Management Board within six weeks of the entry into force of the Regulation.
4. By way of derogation during the year 2019, the nominations referred to in Article 57 (4) and Article 58 (1) shall be made by the Members States within 12 weeks of the entry into force of the Regulation.
5. Deployments in accordance with Article 55 to 58 shall take place as of 1 January 2020.

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

Done at Brussels,

*For the European Parliament*  
*The President*

*For the Council*  
*The President*

## LEGISLATIVE FINANCIAL STATEMENT

### 1. FRAMEWORK OF THE PROPOSAL/INITIATIVE

#### 1.1. Title of the proposal/initiative

Proposal for a Regulation on the European Border and Coast Guard repealing Council Joint Action n°98/700/JHA, Regulation (EU) n° 1052/2013 of the European Parliament and of the Council and Regulation (EU) n° 2016/1624 of the European Parliament and of the Council

Policy area(s) concerned (*Programme cluster*)

Policy area: Migration and Home Affairs

Activity: Security and Safeguarding Liberties

Currently Heading 3a, Title 18 – Home Affairs

#### 1.2. Nature of the proposal/initiative

The proposal/initiative relates to **a new action**

The proposal/initiative relates to **a new action following a pilot project/preparatory action**<sup>49</sup>

The proposal/initiative relates to **the extension of an existing action**

The proposal/initiative relates to **an action redirected towards a new action**

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<sup>49</sup> As referred to in Article 54(2)(a) or (b) of the Financial Regulation.

1.2.1.

### 1.3. Grounds for the proposal/initiative

#### 1.3.1. Requirement(s) to be met in the short or long term

In the short run, the European Border and Coast Guard Agency is expected to continue conducting the Agency's core activities in relation to the management of the external borders and returns including EUROSUR in the same way as it was supported until now. The Agency's budget, including both the EU contribution and the contributions from the Schengen Associated countries, to continue all the activities under the Agency's current mandate would amount to EUR 637,6 million for 2019 and 2020 for the current MFF, and as proposed by the Commission EUR 2,47 billion for the next MFF. The overall financial resources needed and staff requirements are in line with the Legislative Financial Statements in place accompanying the Commission's proposals made at the time of respectively the EUROPEAN BORDER AND COAST GUARD Regulation, the ETIAS Regulation and the Interoperability Regulation. The present proposal aims to reform the European Border and Coast Guard by establishing the Agency's new capabilities, in particular by setting up the European Border and Coast Guard standing corps and acquiring the Agency's own equipment, as well as to adequately address other new or upgraded tasks. For that purpose, an amount of EUR 577,5 million needs to be added to the Agency's budget for 2019 and 2020 under the current Multiannual Financial Framework, which may require the use of special instruments. For the period of 2021-2027, a total of EUR 9,37 billion will be needed to cover all the new and upgraded tasks and functions.

Overall, the total costs of the existing and future mandate would amount to EUR 1,22 billion for the period of 2019-2020 and to EUR 11,27 billion for the 2021-2027 period.

The main elements of the proposal can be summarised as follows in terms of substance and timeline:

The establishment of the European Border and Coast Guard standing corps of 10.000 operational staff:

- The operational staff of the European Border and Coast Guard standing corps means border guards, return escorts, return specialists and other relevant staff employed by the European Border and Coast Guard Agency, seconded to the Agency by the Member States or provided for short term deployment by the Member States to act as members of border management teams, migration management support teams or return teams having executive powers. The EUROPEAN BORDER AND COAST GUARD standing corps will consist of three categories of operational staff implying the following costs.

- Category 1 (the staff of the Agency): The statutory staff will be an essential component of the EUROPEAN BORDER AND COAST GUARD Standing corps. The number of the Agency's operational staff within the corps is expected to grow from 750 in 2019 to 3000 by 2025. Temporary Agents and Contract Agents will be represented at the share of 50% each. The corresponding staff costs were calculated based on standard units (ie € 143,000.00 per TA/year and € 74,000 per CA/year). For Category 1, the proposal foresees deployment costs calculated with the assumption that all the Agency's own operational staff members will be deployed to operational areas, on a nearly permanent basis. The calculation of deployment costs are based on



approximation of the daily rates used currently by the Agency (on average € 200 per day) subject to 40% reduction given the long-term nature of such deployments. Staff recruited under this category will be able to act as members of the teams deployed from the EUROPEAN BORDER AND COAST GUARD standing corps to carry out border control and return tasks, including those with executive powers. Given this specificity of the Agency's operational staff, all the newly recruited staff should undergo a full-fledged inception training for border control or return functions of around 6 months costing approximately € 40.000 per person. Afterwards, each year specialised or refreshment training would be needed for the Agency's operational staff with an approximate cost of € 10.000 per person.

- Category 2 (operational staff seconded by Member States for a long term duration): this type of operational staff is also expected to grow from 1500 in 2020 to 3000 by 2025. The proposal foresees that the seconded staff will be permanently deployed in the different operational areas. So the main costs will be related to deployment. Similarly to Category 1, the deployment costs were calculated with the assumption that all the staff members will be deployed during their secondments on a long term basis. The same average daily rate (ie € 200 per day subject to 40% reduction due to the long missions) was applied as for category 1. The training needs of operational seconded staff will be accommodated with an estimated yearly cost of € 5.000 per staff member.

- Category 3 (operational staff deployed by Member States for a short duration). This category of operational staff is expected to gradually decrease within the EUROPEAN BORDER AND COAST GUARD standing corps from 7000 members in 2020 to 4000 in 2025. The main costs of this part of the EUROPEAN BORDER AND COAST GUARD standing corps are related to their deployment. Similarly to Category 1 and 2, the deployment costs were calculated with the use of the same average daily rate (ie € 200 per day) calculated for 30 days per month, covering up-to maximum 4 months of deployment. However, contrary to Category 1 and 2, the deployment costs are not subject to the 40% reduction applicable in case of long missions.

- In addition, for Category 2 and 3, the proposal foresees a financial support system to support and secure the long term development of Member States' human resources by enabling them to hire and train additional staff to provide the necessary flexibility to comply with their mandatory contribution to the European Border and Coast Guard standing corps while keeping sufficient own national capacities. The system is calculated on the yearly basic salary of a Contract Agent of Function Group III Grade 8 Step 1 to which a relevant co-efficient was applied per each Member State ("base amount"). For Category 2, 100% of the "base amount" is multiplied by the number of operational staff expected to be seconded each year by a Member State. For Category 3, 30% of the "base amount" (corresponding to the mandatory availability of 4 months) is multiplied by the number of operational staff effectively deployed in the previous year by a Member State.

- Overall, the setting up and deployment of the EUROPEAN BORDER AND COAST GUARD standing corps in its full capacity as of 2020 would cost EUR 5,83 billion.

The acquisition of the Agency's own equipment

- To overcome the persistent gaps in the voluntary pooling of technical equipment from Member States, in particular as regards large scale assets, the

Agency should have its own necessary equipment to be deployed in joint operations or rapid border interventions or any other operational activities.

- While the Agency has been legally able to acquire or lease its own technical equipment since 2011, this possibility was significantly hindered by the lack of necessary budgetary resources. With the adoption of the 2016 Regulation, the Agency was provided with a dedicated budget of EUR 40 million to acquire small and medium size equipment and the Agency has made progress to use these opportunities.
- As a natural consequence of these developments as well as to match the level of ambitions underlying the establishment of the EUROPEAN BORDER AND COAST GUARD standing corps, the Commission considers that a significant envelope (EUR 2,2 billion ) should be made available to the Agency under the 2021-2027 multiannual financial framework to allow it to acquire, maintain and operate the necessary air, sea and land assets corresponding to the operational needs.
- While the acquisition of the necessary assets could be a lengthy process, especially for large assets, the Agency's own equipment should ultimately become the backbone of the operational deployments with additional contributions of Member States to be called upon in exceptional circumstances. The Agency's equipment should be largely operated by the Agency's technical crews being part of the EUROPEAN BORDER AND COAST GUARD standing corps. In order to ensure the effective use of the proposed financial resources for the Agency's own equipment, the process shall be based on a multiannual strategy decided as early as possible by the management board and accompanied by an action plan.
- The Agency's own equipment should complement a pool of technical equipment provided by the Member States, in particular the means of transport and operating equipment purchased by Member States under the Specific Actions of the Internal Security Fund.

The Agency's antenna offices

- Taking into account the enhanced mandate of the European Border and Coast Guard Agency, the setting up of the European Border and Coast Guard standing corps and its strengthened presence on the ground at the Union's external borders and its increased engagement in the field of returns, it should be possible for the Agency to establish antenna offices situated at locations in proximity of its significant operational activities for the period of duration of these activities, to act as an interface between the Agency and the host Member State and to deal with coordination, logistical and support tasks as well as to facilitate cooperation between the Agency and the host Member State.
- In order to enable the development of antennas the Agency shall be provided with additional budget. Currently, the gradual setting up of 5 antennas is foreseen. The relevant budget foreseen under the current MFF (2019-2020) is EUR 1,5 million, while for the next MFF (2021-2027) is EUR 11,3 million.

FADO

- The Agency will take over and manage the FADO system. FADO related costs will include operational and personnel costs, IT systems and software, maintenance and security infrastructure. The costs related to the migration and maintenance of FADO would amount to EUR 1,5 million under the current MFF (2019-2020) and EUR 10,5 million under the next MFF (2021-2027).

#### The Agency's activities in the area of return

- The proposal aims to significantly reinforce the Agency's support for Member States in the field of return and also the cooperation with third countries in this area, including the acquisition of travel documents.
- In this regard, an amount of EUR 1,75 billion should be added to the Agency's budget for the next MFF (2021-2027) with approximately EUR 250 million per year in view of facilitating the return of 50000 returnees per year.

#### Evolution of EUROSUR

- Overall, the evolution of EUROSUR will impact the Agency's budget with a total EUR 20 million under the current MFF (2019-2020) and EUR 140 million under the next MFF (2021-2027) and with 100 additional staff drawn from the human resources described in the following paragraph.
- For the Agency the improvement of the functioning of the system is estimated for the Agency an 35 additional staff consisting mainly of IT experts and data analysts.
- The enlargement of the scope of EUROSUR to include border crossing points and air border surveillance, to address secondary movements, to improve information exchange with third countries and to manage integrated planning is estimated an 65 additional staff composed of IT experts, risks analysts and operators and planners.
- The Copernicus Space Programme will continue to support the deployment of the EUROSUR Fusion Services with earth observation products and services while the Research Framework programme will continue to support the development of new information services and surveillance technologies.
- The instruments of DG NEAR and DG DEVCO will continue supporting the development of Integrated Border Management including National Coordination Centres in third countries.
- In addition to the Agency's budget, in order to support the implementation of the evolution of EUROSUR on the side of Member States, the proposal will have implications on the use of resources from the Internal Security Fund Border and Visa in 2020 (EUR 52,5 million) and the future Integrated Border Management Fund (EUR 647,5 million) in the period of 2021-2027. The relevant actions will be implemented in shared or direct management.

#### Human resources

As for the human resources, the Agency is expected to reach 1000 staff members by 2020. In order to establish the European Border and Coast Guard standing corps, the Agency will be allocated with additional posts: starting with 750 posts in 2019 and reaching 3000 posts by 2025. The additional posts will be equally split between temporary agents and contractual agents. The new posts will be largely used to recruit and train operational staff members under Category 1 of the European Border and Coast Guard standing corps. However, this category will also include staff members foreseen for the setting up and operation of the ETIAS's Central unit.

Moreover, within the above-mentioned figure of 3000 posts, the Agency could use up to 4% of the total size of the Standing corps to recruit staff members to support the establishment of the European Border and Coast Guard standing corps (recruitment, daily management, operational planning etc), staffing of antennas, the

acquisition of the Agency's equipment, other new tasks related to the functioning of the European Border and Coast Guard, including EUROSUR, the reinforced mandate for returns and the takeover of FADO.

### 1.3.2. *Added value of EU involvement*

The objective of this proposal is to ensure a European integrated management of the EU's external borders, with a view to managing migration effectively and ensuring a high level of security within the Union, while safeguarding the free movement of persons therein. In an area without internal borders, irregular immigration through the external borders of one Member State affects all other Member States within the Schengen area. An area without internal borders is only sustainable if the external borders are effectively secured and protected.

Since the control of the Union's external borders is a common and shared interest which must be carried out in accordance with high and uniform Union standards, the objectives of this proposal cannot be sufficiently achieved by the Member States, and can be better accomplished at the level of the Union, the Union may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union

The proposal is intended to respond to the new challenges and political realities faced by the Union, both as regards migration management and internal security. It reinforces a tool box of capabilities available to the European Border and Coast Guard, notably by setting up the European Border and Coast Guard standing corps of 10 000 operational staff to comprehensively deal with challenges in the management of EU borders and return. It ensures that rules on integrated border management are fully and correctly implemented by Member States in line with a coherent multiannual strategic policy cycle, that appropriate action is taken to prevent crisis situations and to respond effectively at an early stage at the external borders if such a situation arises and it is only when the situation becomes more critical, that urgent action is taken at Union level for direct intervention on the ground.

In particular, the EU added value of EUROSUR is fully acknowledged by the EU border management community. Removing the EUROSUR framework is not conceivable since most Member States now depend on it for border surveillance.

The EUROSUR Fusion Services bring a real added value to the end users involved in border surveillance. No national border guard organisation alone could afford the space based surveillance services and other long range platforms offered by the EUROSUR Fusion Services.

### 1.3.3. *Lessons learned from similar experiences in the past*

The Frontex Agency was set up in 2004 and became operational in 2005. As requested by the Hague programme, the Commission adopted on 13 February 2008 a Communication on the evaluation and future development of the Frontex Agency (COM(2008) 67 final).

The Communication issued recommendations for the short to medium term and launched ideas for the future development of the Agency in the longer term. For the longer term perspective the crucial role of Frontex in the development of the European Union's integrated border management system was underlined.

In conclusion the Commission recommended a number of improvements for how the Agency operates within its mandate and that in the medium-term the mandate should be revised.

In addition to the abovementioned Commission Report on the evaluation and future development of the Frontex Agency an independent evaluation took place during 2008. That evaluation contracted by the Frontex Management Board as requested by Article 33 of the Frontex Regulation, provided additional points of view and factual elements on the working practices of the Agency. It also issued a series of recommendations to the Frontex Management Board. Against this background, the Agency's mandate was amended in 2011 to enable it to respond to the new challenges.

Despite the improvements introduced by the 2011 amendment, following the clear political guidance provided by the European Council in the course of 2015 on the role of the Frontex Agency in addressing the increasing migratory pressures and the external evaluation of the Frontex Agency in 2014/2015, the further revamping of the Agency's mandate is needed.

The 2015 migration crisis, with its unprecedented irregular arrivals on EU soil, gave rise to many challenges for the migration policy of the EU and its Member States. The crisis showed that the Union framework and operational capacities had not been designed to sustain such massive migratory pressure. The intense migratory pressure and the subsequent secondary movements also put a strain on the Schengen area, forcing several Member States to reintroduce internal border controls.

Immediately taking actions, the Commission came forward with a wide range of measures, for the short term as well as the long term, including to: prevent further losses of migrants' lives at sea, strengthen the EU external borders, reduce the incentives for irregular migration and strengthen the common asylum policy. In particular, a proposal for significantly enhancing the mandate of the Union's border agency was presented in December 2015 and negotiated in a record time during 2016. The Regulation on the European Border and Coast Guard entered into force on 6 October 2016, and the new mandate, with increased capacities and resources has been speedily implemented since then. Yet, more remains to be done towards further improving our framework in the area of control of external borders, returns and asylum. In its conclusions of 28 June 2018, the European Council called for further strengthening the supportive role of the European Border and Coast Guard Agency, including in the cooperation with third countries, through increased resources and an enhanced mandate. The key objective is to equip the Agency with the EUROPEAN BORDER AND COAST GUARD standing corps in order to ensure the effective control of the EU's external borders and to significantly step up the effective return of irregular migrants.

#### *1.3.4. Compatibility and possible synergy with other appropriate instruments*

This proposal is consistent with the European Council conclusions of 28 June 2018 strengthening further the supportive role of the European Border and Coast Guard Agency, including in the cooperation with third countries, through increased resources and an enhanced mandate, with a view to ensure the effective control of the EU's external borders and significantly stepping up the effective return of irregular migrants. Also in line with the European Council Conclusions, it is coherent with the objective of building an internal migration policy which is based on a balance between solidarity and responsibility: the establishment of the EUROPEAN

BORDER AND COAST GUARD standing corps with well-defined mandatory contributions of all Member States to enable the EUROPEAN BORDER AND COAST GUARD Agency to provide effective support to frontline Member States is an essential element of European solidarity.

This proposal builds on the existing border management policy and toolbox, in particular the European Border and Coast Guard established by Regulation (EU) No 2016/1624. Over the past two years, the operationalisation of this new framework has been significantly progressing, notably by delivering the first cycles of vulnerability assessments and setting up the rapid reaction pools to respond to emergency situations. Through the EUROPEAN BORDER AND COAST GUARD standing corps of 10,000 operational staff, this proposal substantially expands the capabilities of the Agency, and therefore of the Union, to respond effectively to present or future threats and challenges at the external borders by proactively reinforcing, assessing, and coordinating the actions of Member States at the external borders and with third countries as well as to ensure a credible return policy.

The evaluation report of EUROSUR concluded that the EUROSUR framework has met its objectives, that the EUROSUR functioning could be improved by evolving from a technical information system into a governance framework for information exchange and cooperation, covering border control and possibly also other selected components of European Integrated Border Management. As provided for in the annexed Report on the evaluation of EUROSUR, EUROSUR fosters synergies and thus coherence with other policies: the National Coordination Centre is a focal point for operational cooperation with other policy actors in areas such as maritime affairs, security and customs control. It is also a good example for civil/military cooperation as several National Coordination Centres are hosting also military actors such as Navy officers.

At EU level the EUROSUR Fusion Services is a tool which can be used for other coast guard functions such as fisheries control. There are also mutual benefits for external security as for instance EUROSUR information products have been shared via the Agency with the CSDP operation EUNAVFOR Med Sophia.

The EUROSUR Fusion Services are also a tool to operationalise research projects and programs and are a concrete outcome of the EU Space Programme Copernicus.

The proposed evolution of EUROSUR and the enlargement of its scope will improve the overall coherence with Integrated Border Management and lead to other cooperation in particular with the Aviation Sector but also in the area of EU external action.

Thus, through the integration of the European Border Surveillance System (Eurosir) into the framework of the European Border and Coast Guard, the proposal further fosters a spirit of cooperation, information exchange and the coordination of efforts between the Member States and the European Border and Coast Guard Agency, as well as among national authorities and Union Agencies, with concrete and binding commitments. It also builds upon Regulation (EU) No 656/2014 establishing rules for the surveillance of the external sea borders in the context of operational cooperation coordinated by Frontex.

The proposal clarifies the relation between vulnerability assessments carried out by the Agency and the Schengen evaluation mechanism established by Regulation (EU) No 1053/2013 in view of maximising synergies between these two mechanisms

which are essential for European quality control on the functioning of the Schengen area.

This proposal builds upon and further develops those existing policy provisions and brings them together in the European Border and Coast Guard, thus establishing an integrated management system for external borders at Union level as provided for in Article 77(2)(d) of the Treaty on the Functioning of the European Union.

This proposal is consistent with the comprehensive long-term policy on better migration management as set out by the Commission in the European Agenda on Migration, which developed President Juncker's Political Guidelines into a set of coherent and mutually reinforcing initiatives based on four pillars. Those pillars consist of reducing the incentive for irregular migration, securing external borders and saving lives, a strong asylum policy and a new policy on legal migration. This proposal further implements the European Agenda on Migration, more specifically as regards the objective of securing external borders as the European Border and Coast Guard will implement European Integrated Border Management. Moreover, It responds to the request of the European Council for strengthening further the supportive role of the European Border and Coast Guard Agency, including in the cooperation with third countries, through increased resources and an enhanced mandate, with a view to ensure the effective control of the EU's external borders and significantly stepping up the effective return of irregular migrants.

This proposal is closely linked and complements other Union policies, namely:

- The Common European Asylum System with the setting up of migration management support teams at hotspot areas and at controlled centres, and the reinforced cooperation with the European Union Asylum Authority;
- The external action policy of the Union as the European Border and Coast Guard Agency facilitates and encourages operational cooperation between Member States and third countries and, where relevant, support third countries, with its expanded capabilities, including the possibilities of deploying the EUROPEAN BORDER AND COAST GUARD standing corps in third countries, as well as by reinforced cooperation with the authorities of third countries on return, including as regards the acquisition of travel documents. The proposed improvements related to information exchange and cooperation with third countries will further improve the consistency of the EU external action.
- The European Border and Coast Guard Agency, including through EUROSUR, triggers a strong interagency cooperation with many EU Agencies in other policy areas such as the European Maritime Safety Agency (EMSA), the European Fisheries Control Agency (EFCA) and the EU Satellite Centre, EUROPOL or the European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice (EU LISA).
- The European Border and Coast Guard, especially through its EUROSUR components will remain a driver for research and innovation both at Member States and EU level. The new EUROSUR Fusion Services are a tool to operationalise EU research projects and a concrete outcome of the EU Space Programmes such as Copernicus, but also Galileo and GOVSATCOM.
- This proposal is consistent with the Commission proposal (COM(2018) 303 final) to revise the Regulation on the creation of a European network of immigration liaison officers (ILO). The objective of the revision of the ILO Regulation is to

enhance coordination and to optimise the use of immigration liaison officers, including the new European liaison officers deployed to third countries to enable them to respond more effectively to EU priorities in the field of migration, including integrated border management. The proposal will complement this approach by ensuring proper links between the ILOs and the national coordination centres (NCC) and a better political coordination of the external dimension of the EUROPEAN BORDER AND COAST GUARD through bi and multilateral agreements.



#### 1.4. Duration and financial impact

Proposal/initiative of **limited duration**

- Proposal/initiative in effect from [DD/MM]YYYY to [DD/MM]YYYY
- Financial impact from YYYY to YYYY for commitment appropriations and from YYYY to YYYY for payment appropriations

Proposal/initiative of **unlimited duration**

- Implementation with a start-up period from YYYY to YYYY,
- followed by full-scale operation.

#### 1.5. Management mode(s) planned<sup>50</sup>

**Direct management** by the Commission

- by its departments, including by its staff in the Union delegations;
- by the executive agencies

**Shared management** with the Member States

**Indirect management** by entrusting budget implementation tasks to:

- third countries or the bodies they have designated;
- international organisations and their agencies (to be specified);
- the EIB and the European Investment Fund;
- bodies referred to in Articles 208 and 209 of the Financial Regulation;
- public law bodies;
- bodies governed by private law with a public service mission to the extent that they provide adequate financial guarantees;
- bodies governed by the private law of a Member State that are entrusted with the implementation of a public-private partnership and that provide adequate financial guarantees;
- persons entrusted with the implementation of specific actions in the CFSP pursuant to Title V of the TEU, and identified in the relevant basic act.
- *If more than one management mode is indicated, please provide details in the 'Comments' section.*

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Details of management modes and references to the Financial Regulation may be found on the BudgWeb site: [http://www.cc.cec/budg/man/budgmanag/budgmanag\\_en.html](http://www.cc.cec/budg/man/budgmanag/budgmanag_en.html)

## **2. MANAGEMENT MEASURES**

### **2.1. Monitoring and reporting rules**

*Specify frequency and conditions.*

The Agency is subject to regular monitoring and reporting requirements. The Management Board of the Agency shall adopt each year a consolidated 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. This report shall be made public. Every four years, the Commission shall conduct an evaluation in accordance with the evaluation criteria of the Commission guidelines to assess particularly the impact, effectiveness and efficiency of the Agency's performance and its working practices in relation to its objectives, mandate and tasks. The evaluation shall, in particular, address the possible need to modify the mandate of the Agency, and the financial implications of any such modification

### **2.2. Management and control system**

#### **2.2.1. *Justification of the management mode(s), the funding implementation mechanism(s), the payment modalities and the control strategy proposed***

Through shared management Member States implement programmes that contribute to the policy objectives of the Union, which are tailor-made to their national context. Shared management ensures that financial support is available in all participating states. Furthermore, shared management allows for funding predictability and for Member States, who are most knowledgeable of the challenges they are faced with, to plan their long-term endowments accordingly. Top-up funding for specific actions (which require cooperative efforts amongst Member States or where new developments in the Union require additional funding to be made available to one or more Member States) and for resettlement and transfer activities can be implemented through shared management. In a new development, the Fund can also provide emergency assistance through shared management, in addition to direct and indirect management.

Through direct management, the Commission supports other actions that contribute to the common policy objectives of the Union. The actions enable tailor-made support for urgent and specific needs in individual Member States ('emergency assistance'), support transnational networks and activities, test innovative activities that could be scaled up under national programmes and cover studies in the interest of the Union as a whole ('Union actions').

Through indirect management, the Fund retains the possibility of delegating budget implementation tasks to, inter alia, international organisations and home affairs agencies for particular purposes.

The payment arrangements for shared management are described in the Common Provisions Regulation (CPR) proposal, which provides for an annual pre-financing, followed by a maximum of four interim payments per programme and year based on the payment applications sent by the Member States during the accounting year. As per the CPR proposal the pre-financing is cleared within the final accounting year of the programmes. The control strategy will be based on the new Financial Regulation and on the Common Provisions Regulation. The new Financial Regulation and the proposal for CPR should extend the use of the simplified forms of grants such as lump-sums, flat rates and unit costs. It also introduces new forms of payments, based

on the results achieved, instead of the cost. Beneficiaries will be able to receive a fixed amount of money if they prove that certain actions such as training courses or delivery of emergency assistance have taken place. This is expected to simplify the control burden both at beneficiary and Member State level (e.g. check of bills and receipts for costs).

For shared management, the CPR proposal<sup>51</sup> builds on the management and control strategy in place for the 2014-2020 programming period but introduces some measures aimed at simplifying the implementation and reducing the control burden at the level of both beneficiaries and Member States.

The new developments include: - the removal of the designation procedure (which should make it possible to speed up the implementation of the programmes); - management verifications (administrative and on-the-spot) to be carried out by the managing authority on a risk basis (compared to the 100 % administrative controls required in the 2014-2020 programming period). Furthermore, under certain conditions, the managing authorities may apply proportionate control arrangements in line with the national procedures; - conditions to avoid multiple audits on the same operation/expenditure. The programme authorities will submit to the Commission interim payment claims based on expenditure incurred by beneficiaries. The CPR proposal allows the managing authorities to carry out management verifications on a risk basis and also provides for specific controls (e.g. on-the-spot controls by the managing authority and audits of operations/expenditure by the audit authority) after the associated expenditure has been declared to the Commission in the interim payment claims. In order to mitigate the risk of reimbursing ineligible expenditure, the CPR caps the Commission's interim payments at 90 %, given that at this moment only part of the national controls have been carried out. The Commission will pay the remaining balance following the annual clearance of accounts exercise, upon receipt of the assurance package from the programme authorities. Any irregularities detected by the Commission or the European Court of Auditors after the transmission of the annual assurance package may lead to a net financial correction.

2.2.2. *Information concerning the risks identified and the internal control system(s) set up to mitigate them*

The high migratory pressure on the external borders of the European Union requires the creation of the European Border and Coast Guard composed of the Member States's authorities and the European Border and Coast Guard Agency. An extension of the competences of the European Border and Coast Guard Agency and of the scope of EUROSUR is also necessary.

Reinforcement of the Agency's staffing and financial resources is necessary in order to comply with the extended mandate and requirements laid down by the proposed Regulation.

The Agency's accounts will be submitted for the approval of the Court of Auditors, and subject to the discharge procedure. The Commission's Internal Audit Service will carry out audits in cooperation with the Agency's internal auditor.

The management and control systems established under the different financial programmes (e.g. Internal Security Fund) used will be applied.

<sup>51</sup>

COM(2018)375 Final.

### Shared management:

DG HOME has not been facing important risks of errors in its spending programmes. This is confirmed by the recurrent absence of significant findings in the annual reports of the Court of Auditors. Furthermore, DG HOME has already revised its legal basis (Regulation (EU) 2015/378 and Delegated Regulation (EU) 1042/2014) to align further to the control framework of the other Funds under the Common Provisions Regulation and their assurance model and to continue maintaining a low level of errors in its spending programmes. This effort of alignment continues with the current proposal, where the Control Framework is consistent with the other DGs managing funds under shared management. In shared management, the general risks in relation to the implementation of the current programmes concern the under-implementation of the Fund by the Member States and the possible errors derived from the complexity of rules and weaknesses in management and control systems. The CPR simplifies the regulatory framework by harmonising the rules and management and control systems across the different Funds implemented under shared management. It also enables risk-differentiated control requirements (e.g. risk-based management verifications, possibility for proportionate control arrangements based on national procedures, limitations of audit work in terms of timing and/or specific operations).

**Direct/indirect management:** Based on the recent analysis of the main causes and types of most commonly detected errors in ex post audits the main areas of non-compliance stem from poor financial management of the grants awarded to the beneficiaries, missing or inadequate supporting documents, incorrect public procurement, and costs not budgeted. Consequently the risks are mainly due to: – ensuring quality of selected projects and their subsequent technical implementation, unclear or incomplete guidance provided to beneficiaries or insufficient monitoring; – risk of inefficient or non-economic use of funds awarded, both for grants (complexity of reimbursing actual eligible costs coupled with limited possibilities to check eligible costs at the desk) and for procurement (sometimes limited number of economic providers with the required specialist knowledge entailing insufficient possibilities to compare price offers); – risk relating to the capacity of (especially) smaller organisations to effectively control expenditure as well as to ensure the transparency of operations carried out. – reputational risk for the Commission, if fraud or criminal activities are discovered; only partial assurance can be drawn from the third parties' internal control systems due to the rather large number of heterogeneous contractors and beneficiaries, each operating their own control system, often rather small in size. Most of these risks are expected to be reduced thanks to a better design of calls for proposals, guidance to beneficiaries, targeting of proposals and the better use simplified costs and cross-reliance on audits and assessments as included in the new Financial Regulation. The Court of Auditors assessed in 2016 the DG HOME's systems for direct management (procurement included) and concluded that DG HOME implemented the relevant controls required by the financial regulation and the review did not reveal major weaknesses. The same level of supervision and controls is to be maintained in the future.

**Direct/indirect management:** Based on the recent analysis of the main causes and types of most commonly detected errors in ex post audits the main areas of non-compliance stem from poor financial management of the grants awarded to the beneficiaries, missing or inadequate supporting documents, incorrect public procurement, and costs not budgeted. Consequently the risks are mainly due to: –

ensuring quality of selected projects and their subsequent technical implementation, unclear or incomplete guidance provided to beneficiaries or insufficient monitoring; – risk of inefficient or non-economic use of funds awarded, both for grants (complexity of reimbursing actual eligible costs coupled with limited possibilities to check eligible costs at the desk) and for procurement (sometimes limited number of economic providers with the required specialist knowledge entailing insufficient possibilities to compare price offers); – risk relating to the capacity of (especially) smaller organisations to effectively control expenditure as well as to ensure the transparency of operations carried out. – reputational risk for the Commission, if fraud or criminal activities are discovered; only partial assurance can be drawn from the third parties' internal control systems due to the rather large number of heterogeneous contractors and beneficiaries, each operating their own control system, often rather small in size. Most of these risks are expected to be reduced thanks to a better design of calls for proposals, guidance to beneficiaries, targeting of proposals and the better use simplified costs and cross-reliance on audits and assessments as included in the new Financial Regulation.

The Commission takes part in the governance of European Border and Coast Guard Agency by participating as a member in the Management Board. In 2017, following the revision of DG HOME's organigramme, the Commission revised its decision on the Commission representatives in the Management Boards, providing in most cases for higher representation through the involvement of the Deputy Directors-General.

The operational units for particular policies are involved in numerous contacts at working level, coordination meetings, providing opinions on annual work programme, draft budget, staff policy plan and monitoring of their implementation. Contacts at higher level, notably of the Director-General with the Executive Directors and the Chairs of the Management Boards, are also taking place throughout the year.

DG HOME follows the European Border and Coast Guard Agency's budget from the preparation of the budgetary procedure through the implementation of the annual EU contribution, until the submission of the accounts and the discharge process. Monitoring of budget implementation is necessary, also to promote the implementation rate and avoid to the extent possible that payment appropriations be returned by agencies during the last quarter of the year.

Following the IAS audit on "Coordination and working arrangements with EU decentralized agencies in DG HOME", DG HOME proposed an action plan to address the audit recommendations, mainly in relation to increasing awareness of staff dealing with agencies in DG HOME, earlier involvement in agencies programming phase, strengthening its monitoring of agencies' performance based on appropriate performance indicators, establishment of a control strategy and reinforcing the building blocks of the declaration of assurance regarding payments made to agencies.

2.2.3. *Estimation and justification of the cost-effectiveness of the controls (ratio of "control costs ÷ value of the related funds managed"), and assessment of the expected levels of risk of error (at payment & at closure)*

Shared management: The cost of controls is expected to remain the same or potentially be reduced for Member States. For the present (2014-2020) programming

cycle, as of 2017, the cumulative cost of control by the Member States is estimated at approximately 5 % of the total amount of payments requested by the Member States for the year 2017. This percentage is expected to decrease with efficiency gains in implementation of the programmes and increase in payments to Member States. With the risk-based approach to management and controls being introduced in the CPR coupled with an enhanced drive to adopt simplified cost options (SCOs), the cost of controls for Member States is expected to be reduced further.

Direct/indirect management: The cost of controls amounts to approximately 2.5 % of the payments made by DG HOME. This is expected to stay stable or slightly decrease in the event of the use of SCOs being broadened in the next programming period.

### 2.3. Measures to prevent fraud and irregularities

*Specify existing or envisaged prevention and protection measures, e.g. from the Anti-Fraud Strategy.*

#### **For the Agency**

The Executive Directive will implement the Agency's budget. He/she will each year submit to the Commission, the Management Board and the Court of Auditors the detailed accounts of all revenue and expenditure from the previous financial year. In addition, the Commission's Internal Audit Service will assist in the management of the Agency's financial operations by controlling risks, monitoring compliance by providing an independent opinion on the quality of management and control systems and making recommendations in order to improve the efficiency and the effectiveness of operations and to ensure economy in the use of the Agency's resources.

The Agency will adopt its Financial Regulation following Regulation No 1271/2013, after having received the agreement of the Commission and the Court of Auditors. The Agency will put in place an internal audit system similar to that introduced by the Commission in the framework of its own restructuring.

#### **Cooperation with OLAF**

The staff subject to the Commission's Staff Regulations will cooperate with OLAF to combat fraud.

#### **For the Court of Auditors**

The Court of Auditors will examine the accounts in accordance with Article 248 of the Treaty and publish an annual report on the Agency's activities.

Anti-fraud measures established at national and European level fully apply.

#### **DG HOME Funds**

Fraud prevention and detection is one of the objectives of internal control as stipulated in the Financial Regulation and a key governance issue, which the Commission has to address throughout the whole expenditure life cycle.

In addition, DG HOME's anti-fraud strategy (AFS) mainly aims at prevention, detection and reparation of fraud, ensuring inter alia that its internal anti-fraud related controls are fully aligned with the Commission's anti fraud strategy (CAFS) and that its fraud risk management approach is geared to identifying fraud risk areas and adequate responses.

As regards shared management, Member States will ensure the legality and regularity of expenditure included in their accounts submitted to the Commission. In this context, Member States will take all required actions to prevent, detect and correct irregularities, including fraud. As in the present (2014-2020) programming cycle Member States are obliged to put in place procedures for detection of irregularities and anti-fraud and to report to the Commission irregularities, including suspected fraud and established fraud in the areas of shared management. Anti-fraud measures will remain a cross-cutting principle and obligation for Member States.

### 3. ESTIMATED FINANCIAL IMPACT OF THE PROPOSAL/INITIATIVE

#### 3.1. Heading(s) of the multiannual financial framework and expenditure budget line(s) affected

- Existing budget lines

In order of multiannual financial framework headings and budget lines.

Heading of multiannual financial framework	Budget line	Type of expenditure	Contribution			
			from EFTA countries <sup>53</sup>	from candidate countries <sup>54</sup>	from third countries	within the meaning of Article 21(2)(b) of the Financial Regulation
	Number 3 Heading 'Security and Citizenship'	Diff./Non-diff. <sup>52</sup>				
3	18.020101 Internal Security Fund – Borders and Visa	Diff.	NO	NO	YES	NO
3	18.0203 European Border and Coast Guard Agency	Diff.	NO	NO	YES	NO

- New budget lines requested

In order of multiannual financial framework headings and budget lines.

Heading of multiannual financial framework	Budget line	Type of expenditure	Contribution			
			from EFTA countries	from candidate countries	from third countries	within the meaning of Article 21(2)(b) of the Financial Regulation
	Number 4 Heading: 'Migration and Border Management'	Diff./Non-diff.				
4	11.XXYY Border and Management and Visa Instrument (BMVI)	Diff.	NO	NO	YES	NO
4	11.XXYY European Border and Coast Guard Agency	Diff.	NO	NO	YES	NO

<sup>52</sup> Diff. = Differentiated appropriations / Non-diff. = Non-differentiated appropriations.

<sup>53</sup> EFTA: European Free Trade Association.

<sup>54</sup> Candidate countries and, where applicable, potential candidate countries from the Western Balkans.



### 3.2. Estimated impact on expenditure

#### 3.2.1. Summary of estimated impact on expenditure

#### — MFF 2014-2020

Heading of current multiannual financial framework	3	‘Security and Citizenship’		EUR million (to three decimal places)	
		2019	2020 <sup>55</sup>	TOTAL <sup>56</sup>	TOTAL <sup>56</sup>
Operational appropriations (ISF –B)	Commitments (1)		52.500		52.500
	Payments (2)		52.500		52.500
	Commitments = Payments (3)		-		
Appropriations of an administrative nature financed from the envelope of the programme <sup>57</sup> (ISF –B)	Commitments (1)	19.321	558.175		577.496
	Payments (2)	19.321	558.175		577.496
Operational and administrative appropriations <sup>58</sup> (European Border and Coast Guard Agency)	Commitments =1+3	19.321	610.675		629.996
	Payments =2+3	19.321	610.675		629.996
<b>TOTAL appropriations for the envelope of the programme</b>					

<sup>55</sup>

<sup>56</sup>

<sup>57</sup>

<sup>58</sup>

For the period 2019-2020, the legislative financial statement illustrates the impact of the new mandate excluding what has already been foreseen under the existing mandate. The amount of EUR 52,500 million is covered by the current MFF for the year 2020 and requires no further reinforcement. Technical and/or administrative assistance and expenditure in support of the implementation of EU programmes and/or actions (former ‘BA’ lines), indirect research, direct research. While the template relates operational appropriations, in case of agencies in order to present in comprehensive way the impact of the operational activities, it seems more appropriate to take into account to operational appropriations (Title 3) but also corresponding administrative credits (Title 1 and 2).

<b>Heading of multiannual financial framework 2014-2020</b>	<b>5</b>	‘Administrative expenditure’ <sup>59</sup>
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EUR million (to three decimal places)

		Year 2019	Year 2020	TOTAL
DG: HOME				
• Human resources				
		1.144	1.144	2.288
• Other administrative expenditure				
		0.080	0.080	0.160
<b>TOTAL DG MIGRATION AND HOME AFFAIRS</b>				
	Appropriations	1.224	1.224	2.448
<b>TOTAL appropriations under HEADING 5 of the multiannual financial framework 2014-2020</b>				
	(Total commitments = Total payments)	1.224	1.224	2.448

		2019	2020	TOTAL
<b>TOTAL appropriations across HEADINGS * of the current multiannual financial framework</b>				
	Commitments	20.545	611.899	632.444
	Payments	20.545	611.899	632.444

\*The amount of EUR 52,500 million is covered by the current MFF for the year 2020.

<sup>59</sup>

While the template relates operational appropriations, in case of agencies in order to present in comprehensive way the impact of the operational activities, it seems more appropriate to take into account to operational appropriations (Title 3) but also corresponding administrative credits (Title 1 and 2). It includes only EU contribution (94%), while for DG HOME funds (100%) was taken into account, as the details of SAC contribution are to be seen later on.

## MFF 2021-2027

<b>Heading of multiannual financial framework 2021-2027</b>	<b>4</b>	<b>Heading: Migration and Border Management</b>
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EUR million (to three decimal places)

		2021	2022	2023	2024	2025	2026	2027	TOTAL <sup>60</sup>
Operational appropriations (BMVI)	Commitments	(1)	80.000	90.000	100.000	101.000	102.000	104.500	<b>647.500</b>
	Payments	(2)	80.000	90.000	100.000	101.000	102.000	104.500	<b>647.500</b>
	Commitments = Payments	(3)							
Appropriations of an administrative nature financed from the envelope of the programme <sup>61</sup>	Operational and administrative appropriations (European Border and Coast Guard Agency)	(1)	1 188.512	1 546.437	1 649.203	1 799.857	1 851.374	1 886.999	<b>11 270.151</b>
		(2)	1 188.512	1 546.437	1 649.203	1 799.857	1 851.374	1 886.999	<b>11 270.151</b>
<b>TOTAL appropriations for the envelope of the programme</b>	Commitments	=1+ 3	1 258.512	1 636.437	1 749.203	1 900.857	1 953.374	1 991.499	<b>11 917.651</b>
	Payments	=2+ 3	1 258.512	1 636.437	1 749.203	1 900.857	1 953.374	1 991.499	<b>11 917.651</b>

<sup>60</sup> The amount of EUR 647,500 million is covered by the next MFF for the years 2021-2027 and were foreseen under BMVI and were foreseen under the BMVI proposal of June 2018.

<sup>61</sup> Technical and/or administrative assistance and expenditure in support of the implementation of EU programmes and/or actions (former 'BA' lines), indirect research, direct research.

<b>Heading of multiannual financial framework 2021-2027</b>	<b>7</b>	<b>‘European Public Administration’</b>
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EUR million (to three decimal places)

	Year <b>2021</b>	Year <b>2022</b>	Year <b>2023</b>	Year <b>2024</b>	Year <b>2025</b>	Year <b>2026</b>	Year <b>2027</b>	<b>TOTAL</b>
DG: HOME								
• Human resources	1.144	1.144	1.144	1.144	1.144	1.144	1.144	<b>8.008</b>
• Other administrative expenditure	0.080	0.080	0.080	0.080	0.080	0.080	0.080	<b>0.560</b>
<b>TOTAL DG MIGRATION AND HOME AFFAIRS</b>	1.224	1.224	1.224	1.224	1.224	1.224	1.224	<b>8.568</b>
<b>TOTAL appropriations under HEADING 7</b> of the multiannual financial framework <b>2021-2027</b>	1.224	1.224	1.224	1.224	1.224	1.224	1.224	<b>8.568</b>

EUR million (to three decimal places)

	<b>2021</b>	<b>2022</b>	<b>2023</b>	<b>2024</b>	<b>2025</b>	<b>2026</b>	<b>2027</b>	<b>TOTAL</b>
<b>TOTAL appropriations across HEADINGS **</b> of the multiannual financial framework <b>2021-2027</b>	1 259.736	1 428.993	1 637.661	1 750.427	1 902.081	1 954.598	1 992.723	<b>11 926.219</b>
Commitments	1 259.736	1 428.993	1 637.661	1 750.427	1 902.081	1 954.598	1 992.723	<b>11 926.219</b>
Payments	1 259.736	1 428.993	1 637.661	1 750.427	1 902.081	1 954.598	1 992.723	<b>11 926.219</b>

\*\*The amount of EUR 647,500 million is covered by the next MFF for the years 2021-2027 and were foreseen under the BMVI proposal of June 2018.

3.2.2. *Summary of estimated impact on on the total European Border and Coast Guard Agency's budget (including operational and administrative appropriations and taking into account the contributions of the Schengen associated countries).*

EUR million (to three decimal places)

Indicate objectives and outputs	Year 2019		Year 2020		Year 2021		Year 2022		Year 2023		Year 2024		Year 2025		Year 2026		Year 2027		TOTAL	
	Number of staff	Cost	Number of staff	Cost	Number of staff	Cost	Number of staff	Cost	Number of staff	Cost	Number of staff	Cost	Number of staff	Cost	Number of staff	Cost	Number of staff	Cost		Total number
	<b>SPECIFIC OBJECTIVE NO 1 "EXISTING MANDATE"</b>																			
EBCGA	880	330.095	1000	342.795	1000	349.651	1000	356.644	1000	363.776	1000	371.052	1000	378.473	1000	386.042	1000	393.763	1000	3 272.291
ETIAS (infrastructure and operating)		-		5.456		5.130		5.130		4.045		4.045		4.045		4.123		4.267		36.240
Interoperability (infrastructure and operation)		-		-		-		0.274		2.660		0.053		-		-		-		2.987
Subtotal for specific objective N°1		330.095		348.251		354.780		362.048		370.481		375.150		382.518		390.166		398.030		3 311.518
	<b>SPECIFIC OBJECTIVE NO 2 "EBCG STANDING CORPS"</b>																			
Staff Costs (Category 1)	750	20.344	1.500	122.063	2.000	189.875	2.000	217.000	2.500	244.125	2.500	271.250	3.000	298.375	3.000	325.500	3.000	325.500	3.000	2 014.031
Deployment Costs (Category 1-2-3)****	0	-	10.000	292.200	10.000	309.600	10.000	309.600	10.000	327.000	10.000	327.000	10.000	344.400	10.000	344.400	10.000	344.400	10.000	2 598.600
Training (Category 1-2)*****	0	-	2.600	51.500	3.600	26.000	3.600	26.000	4.600	33.500	4.600	33.500	5.600	41.000	5.600	41.000	5.600	41.000	5.600	293.500
Subsidy (Category 2-3)*****	0	-	8.500	105.251	8.000	111.089	8.000	111.089	7.500	116.948	7.500	116.948	7.000	122.792	7.000	122.792	7.000	122.792	7.000	929.700
Subtotal for specific objective N°2		20.344		571.013		636.564		663.689		721.573		748.698		806.567		833.692		833.692		5 835.832
	<b>SPECIFIC OBJECTIVE NO 3 "ACQUISITION OF AGENCY'S OWN EQUIPMENT"</b>																			
EBCG Equipment Costs*		-		-		70.000		175.000		280.000		330.000		425.000		445.000		475.000		2 200.000
Subtotal for specific objective N°3		-		-		70.000		175.000		280.000		330.000		425.000		445.000		475.000		2 200.000
	<b>SPECIFIC OBJECTIVE NO 4 "STRENGTHENING OF THE AGENCY'S RETURN ACTIVITIES"</b>																			
Return**		-		-		180.000		210.000		250.000		277.500		277.500		277.500		277.500		1 750.000
Subtotal for specific objective N°4		-		-		180.000		210.000		250.000		277.500		277.500		277.500		277.500		1 750.000
	<b>SPECIFIC OBJECTIVE NO 5 "EUROPEAN BORDERS SURVEILLANCE - EUROSUR &amp; PLANNING ACTIVITIES"</b>																			
Improving the functioning of EUROSUR***		-		3.000		3.000		3.000		3.000		3.000		3.000		3.000		3.000		24.000
Enlarging the scope of EUROSUR***		-		17.000		17.000		17.000		17.000		17.000		17.000		17.000		17.000		136.000
Subtotal for specific objective N°5		-		20.000		20.000		20.000		20.000		20.000		20.000		20.000		20.000		160.000
	<b>SPECIFIC OBJECTIVE NO 6 "INTEGRATION OF FADO"</b>																			
FADO	1	-	1	1.500	1	1.500	1	1.500	1	1.500	1	1.500	1	1.500	1	1.500	1	1.500	1	12.000
Subtotal for specific objective N°6		-		1.500		1.500		1.500		1.500		1.500		1.500		1.500		1.500		12.000
	<b>SPECIFIC OBJECTIVE NO 7 "SETTING OF ANTENNAS"</b>																			
Antenna	2	0.210	2	1.290	5	1.530	5	1.561	5	1.592	5	1.624	5	1.656	5	1.689	5	1.723	5	12.874
Subtotal for specific objective N°7		0.210		1.290		1.530		1.561		1.592		1.624		1.656		1.689		1.723		12.874
<b>TOTAL COST</b>	-	<b>350.648</b>	-	<b>942.054</b>	-	<b>1 264.374</b>	-	<b>1 433.797</b>	-	<b>1 645.145</b>	-	<b>1 754.471</b>	-	<b>1 914.741</b>	-	<b>1 969.547</b>	-	<b>2 007.446</b>	-	<b>13 282.225</b>

### 3.2.3. Estimated impact on European Border and Coast Guard Agency's human resources

#### 3.2.3.1. Summary

- The proposal/initiative does not require the use of appropriations of an administrative nature
- The proposal/initiative requires the use of appropriations of an administrative nature, as explained below:

The staff and corresponding costs are already foreseen in COM(2015)671. The staff number should remain constant from year 2020 at the level of 1000.

	Year 2019	Year 2020	Year 2021	Year 2022	Year 2023	Year 2024	Year 2025	Year 2026	Year 2027
Temporary agents (AD Grades)	242	275	275	275	275	275	275	275	275
Temporary agents (AST grades)	242	275	275	275	275	275	275	275	275
Contract staff	202	230	230	235	250	234	230	230	230
Seconded National Experts	194	220	220	220	220	220	220	220	220
<b>TOTAL</b>	<b>880</b>	<b>1000</b>	<b>1000</b>	<b>1005</b>	<b>1020</b>	<b>1004</b>	<b>1000</b>	<b>1000</b>	<b>1000</b>

The development of the statutory staff as part of the European Border and Coast Guard standing corps/

Staff requirements (FTE):

	Year 2019	Year 2020	Year 2021	Year 2022	Year 2023	Year 2024	Year 2025	Year 2026	Year 2027
Temporary agents (AD Grades)	188	375	500	500	625	625	750	750	750
Temporary agents (AST grades)	187	375	500	500	625	625	750	750	750
Contract staff	375	750	1.000	1.000	1.250	1.250	1.500	1.500	1.500
<b>TOTAL</b>	<b>750</b>	<b>1500</b>	<b>2000</b>	<b>2000</b>	<b>2500</b>	<b>2500</b>	<b>3000</b>	<b>3000</b>	<b>3000</b>

Please indicate the planned recruitment date and adapt the amount accordingly (if recruitment occurs in July, only 50 % of the average cost is taken into account) and provide further explanations.

#### Staff Requirements Detailed

The European Border and Coast Guard standing corps will consist of three different categories of operational staff.

The operational staff of the European Border and Coast Guard standing corps means border guards, return escorts, return specialists and other relevant staff employed by the European Border and Coast Guard Agency, seconded to the Agency by the Member States or provided for short term deployment by the Member States to act as members of border management teams, migration management support teams or return teams having the executive powers as well as personnel responsible for the functioning of the central unit of ETIAS.

Category 1 being the statutory staff will be a new type of the EU staff within the Agency on which executive powers are conferred, including the use of force, when acting as team members deployed from the European Border and Coast Guard standing corps.

Taking into account that indispensable support is needed for the establishment of the European Border and Coast Guard standing corps (recruitment, daily management, operational planning, etc.), coordinating operations, staffing of antennas, the acquisition of the Agency's equipment, other new tasks related to the European Border and Coast Guard functioning, including Eurosur, the reinforced mandate for returns and the takeover of FADO, up to 4% of the total number of the European Border and Coast Guard Standing Corps (4% of 3.000) could be foreseen to be employed as "Operational Support Staff" within the Agency.

In terms of type of posts, the statutory staff will be composed of 25% of ADs, 25% of AST and 50% of contract agents. This breakdown represents the expected distribution of different profiles, roles and functions within the European Border and Coast Guard standing corps. In particular, a significant number of AD staff with the necessary skills, knowledge and professional expertise related to use of the state-of-the-art equipment will be needed in order to operate the Agency's own equipment (ie captains and officers within technical crew of aircraft and vessels). A significant number of AD staff will be also necessary to ensure planning and coordination functions for the increased operational activities carried out by the European Border and Coast Guard standing corps as compared with the current level of the Agency's engagement. A number of AD staff will also deliver managerial activities within the statutory staff. Furthermore, the balance between different types of staff members should be considered in the context technology evolution where a number of basic border management tasks will be automated while the complexity of the system will require higher level of qualification for the staff which will operate and maintain it.



### 3.2.3.2. Estimated requirements of human resources for the parent DG

- The proposal does not require the use of human resources.
- The proposal requires the use of human resources, as explained below:

*Estimate to be expressed in full time equivalent units*

	2019	2020	2021	2022	2023	2024	2025	2026	2027
<b>• Establishment plan posts (officials and temporary staff)</b>									
18 01 01 01 (Headquarters and Commission's Representation Offices)	8	8	8	8	8	8	8	8	8
XX 01 01 02 (Delegations)									
XX 01 05 01 (Indirect research)									
10 01 05 01 (Direct research)									
<b>• External staff (in Full Time Equivalent unit: FTE)<sup>62</sup></b>									
XX 01 02 01 (AC, END, INT from the 'global envelope')									
XX 01 02 02 (AC, AL, END, INT and JED in the delegations)									
<b>XX 01 04 yy</b> <sup>63</sup>	- at Headquarters								
	- in Delegations								
XX 01 05 02 (AC, END, INT - Indirect research)									
10 01 05 02 (AC, END, INT - Direct research)									
Other budget lines (specify)									
<b>TOTAL</b>	<b>8</b>	<b>8</b>	<b>8</b>	<b>8</b>	<b>8</b>	<b>8</b>	<b>8</b>	<b>8</b>	<b>8</b>

**XX** is the policy area or budget title concerned.

The human resources required will be met by staff from the DG who are already assigned to management of the action and/or have been redeployed within the DG, together if necessary with any additional allocation which may be granted to the managing DG under the annual allocation procedure and in the light of budgetary constraints.

Description of tasks to be carried out:

Officials and temporary staff	8 officials to perform the following tasks: 1) Represent the Commission in the Management Board of the Agency. 2) Draw up Commission opinion on the annual work programme and monitor its implementation.
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<sup>62</sup> AC= Contract Staff; AL = Local Staff; END= Seconded National Expert; INT = agency staff; JED= Junior Experts in Delegations.

<sup>63</sup> Sub-ceiling for external staff covered by operational appropriations (former 'BA' lines).

	<p>3) Supervise the preparation of the Agency's budget and monitor implementation of the budget.</p> <p>4) Assist the Agency in developing its activities in line with EU policies including by participating in experts meetings.</p>
External staff	

### 3.2.4. Third-party contributions

The proposal/initiative:

- does not provide for co-financing by third parties
- provides for the co-financing by third parties estimated below:

Appropriations in EUR million (to three decimal places)

Years						2019	2020	TOTAL
Schengen Countries <sup>64</sup>	Associated					21.039	56.523	77.562
TOTAL appropriations co-financed						21.039	56.523	77.562

Years		2021	2022	2023	2024	2025	2026	2027	TOTAL
Schengen Countries	Associated	75.862	86.028	98.709	105.268	114.884	118.173	120.447	719.371
TOTAL appropriations co-financed		75.862	86.028	98.709	105.268	114.884	118.173	120.447	719.371

### 3.3. Estimated impact on revenue

- The proposal/initiative has no financial impact on revenue.
- The proposal/initiative has the following financial impact:
  - on own resources
  - on other revenue

please indicate, if the revenue is assigned to expenditure lines

EUR million (to three decimal places)

Budget revenue line:	Impact of the proposal/initiative <sup>65</sup>						
	2021	2022	2023	2024	2025	2026	2027
Article .....							

For assigned revenue, specify the budget expenditure line(s) affected.

Other remarks (e.g. method/formula used for calculating the impact on revenue or any other information).

<sup>64</sup> The contribution of Schengen Associated countries is annually calculated by Frontex taking into account the size of the EU contribution and GDP ratio for countries concerned. It equals approximately 6% of the total Agency's budget. The contribution is cashed in by the Agency

<sup>65</sup> As regards traditional own resources (customs duties, sugar levies), the amounts indicated must be net amounts, i.e. gross amounts after deduction of 20 % for collection costs.



Brussels, 12.9.2018  
COM(2018) 631 final

ANNEXES 1 to 6

## **ANNEXES**

**to the proposal for a**

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

**on the European Border and Coast Guard  
and repealing Council Joint Action n°98/700/JHA, Regulation (EU) n° 1052/2013 of the  
European Parliament and of the Council and Regulation (EU) n° 2016/1624 of the  
European Parliament and of the Council**

## ANNEX I

Composition of the European Border and Coast Guard standing corps per year and category in accordance with Article XX

<b>Category Year</b>	<b>Category 1 Agency Staff</b>	<b>Category 2 Operational staff for long term secondments</b>	<b>Category 3 Operational staff for short term deployments</b>	<b>Total for the European Border and Coast Guard standing Corps</b>
<b>2020</b>	1500	1500	7000	10000
<b>2021</b>	2000	2000	6000	10000
<b>2022</b>	2000	2000	6000	10000
<b>2023</b>	2500	2500	5000	10000
<b>2024</b>	2500	2500	5000	10000
<b>2025</b>	3000	3000	4000	10000
<b>2026</b>	3000	3000	4000	10000
<b>2027</b>	3000	3000	4000	10000

## ANNEX II

### **List of tasks to be carried out by the Agency's statutory staff as team members deployed from the European Border and Coast Guard standing corps and requiring executive powers**

1. verification of the identity and nationality of persons, including consultation of relevant EU and national databases;
2. authorisation of entry upon border check carried out at the border crossing points (in case that entry conditions laid down in Article 6 of the Schengen Borders Code);
3. refusal of entry upon border check carried out at the border crossing points are fulfilled; in accordance with Article 14 of the Schengen Border Code;
4. stamping of travel documents in accordance with Article 11 of the Schengen Border Code;
5. issuing or refusing of visas at the border in accordance with Article 35 of the Visa Code and introduce the relevant data in VIS;
6. border surveillance including patrolling between border crossing points to prevent unauthorised border crossings, to counter cross-border criminality and to take measures against persons who have crossed the border illegally, including interception/apprehension;
7. register fingerprints of persons apprehended in connection with the irregular crossing of an external border in EURODAC (category 2) in accordance with Chapter III of the EURODAC Regulation;
8. liaising with third countries in view of identification of and obtaining travel documents for third country nationals subject to return;
9. escorting third country nationals subject to forced return.

### ANNEX III

**Table with annual contributions of Member States to be provided to the European Border and Coast Guard standing corps through the long term secondment of operational staff in accordance with Article 57**

<b>Country / Year</b>	<b>2020</b>	<b>2021</b>	<b>2022</b>	<b>2023</b>	<b>2024</b>	<b>2025</b>	<b>2026</b>	<b>2027</b>
<b>Belgium</b>	30	40	40	50	50	60	60	60
<b>Bulgaria</b>	40	53	53	67	67	80	80	80
<b>Czech Republic</b>	20	27	27	33	33	40	40	40
<b>Denmark</b>	29	39	39	48	48	58	58	58
<b>Germany</b>	225	298	298	377	377	450	450	450
<b>Estonia</b>	18	24	24	30	30	36	36	36
<b>Greece</b>	50	67	67	83	83	100	100	100
<b>Spain</b>	111	148	148	185	185	222	222	222
<b>France</b>	170	225	225	285	285	340	340	340
<b>Croatia</b>	65	87	87	108	108	130	130	130
<b>Italy</b>	125	167	167	208	208	250	250	250
<b>Cyprus</b>	8	11	11	13	13	16	16	16
<b>Latvia</b>	30	40	40	50	50	60	60	60
<b>Lithuania</b>	39	52	52	65	65	78	78	78
<b>Luxembourg</b>	8	11	11	13	13	16	16	16
<b>Hungary</b>	65	87	87	108	108	130	130	130
<b>Malta</b>	6	8	8	10	10	12	12	12
<b>Netherlands</b>	50	67	67	83	83	100	100	100
<b>Austria</b>	34	45	45	57	57	68	68	68
<b>Poland</b>	100	133	133	167	167	200	200	200
<b>Portugal</b>	47	63	63	78	78	94	94	94
<b>Romania</b>	75	100	100	125	125	150	150	150
<b>Slovenia</b>	35	47	47	58	58	70	70	70
<b>Slovakia</b>	35	47	47	58	58	70	70	70
<b>Finland</b>	30	40	40	50	50	60	60	60

Country / Year	2020	2021	2022	2023	2024	2025	2026	2027
<b>Sweden</b>	17	23	23	28	28	34	34	34
<b>[Switzerland]</b>	16	21	21	27	27	32	32	32
<b>[Iceland]</b>	2	3	3	3	3	4	4	4
<b>[Liechtenstein]*</b>	0	0	0	0	0	0	0	0
<b>[Norway]</b>	20	27	27	33	33	40	40	40
<b>TOTAL</b>	<b>1500</b>	<b>2000</b>	<b>2000</b>	<b>2500</b>	<b>2500</b>	<b>3000</b>	<b>3000</b>	<b>3000</b>

(\*) Liechtenstein will contribute through proportional financial support



## ANNEX IV

### **Annual contributions of Member States to the EBCG standing corps for short term deployments of operational staff in accordance with Article 58**

<b>Country / Year</b>	<b>2020</b>	<b>2021</b>	<b>2022</b>	<b>2023</b>	<b>2024</b>	<b>2025</b>	<b>2026</b>	<b>2027</b>
<b>Belgium</b>	140	120	120	100	100	80	80	80
<b>Bulgaria</b>	187	160	160	133	133	107	107	107
<b>Czech Republic</b>	93	80	80	67	67	53	53	53
<b>Denmark</b>	135	116	116	97	97	77	77	77
<b>Germany</b>	1052	900	900	748	748	602	602	602
<b>Estonia</b>	84	72	72	60	60	48	48	48
<b>Greece</b>	233	200	200	167	167	133	133	133
<b>Spain</b>	518	444	444	370	370	296	296	296
<b>France</b>	795	680	680	565	565	455	455	455
<b>Croatia</b>	303	260	260	217	217	173	173	173
<b>Italy</b>	583	500	500	417	417	333	333	333
<b>Cyprus</b>	37	32	32	27	27	21	21	21
<b>Latvia</b>	140	120	120	100	100	80	80	80
<b>Lithuania</b>	182	156	156	130	130	104	104	104
<b>Luxembourg</b>	37	32	32	27	27	21	21	21
<b>Hungary</b>	303	260	260	217	217	173	173	173
<b>Malta</b>	28	24	24	20	20	16	16	16
<b>Netherlands</b>	233	200	200	167	167	133	133	133
<b>Austria</b>	159	136	136	113	113	91	91	91
<b>Poland</b>	467	400	400	333	333	267	267	267
<b>Portugal</b>	219	188	188	157	157	125	125	125
<b>Romania</b>	350	300	300	250	250	200	200	200
<b>Slovenia</b>	163	140	140	117	117	93	93	93
<b>Slovakia</b>	163	140	140	117	117	93	93	93
<b>Finland</b>	140	120	120	100	100	80	80	80
<b>Sweden</b>	79	68	68	57	57	45	45	45
<b>[Switzerland]</b>	75	64	64	53	53	43	43	43
<b>[Iceland]</b>	9	8	8	7	7	5	5	5
<b>[Liechtenstein]*</b>	0	0	0	0	0	0	0	0
<b>[Norway]</b>	93	80	80	67	67	53	53	53
<b>TOTAL</b>	<b>7000</b>	<b>6000</b>	<b>6000</b>	<b>5000</b>	<b>5000</b>	<b>4000</b>	<b>4000</b>	<b>4000</b>

(\*) Liechtenstein will contribute through proportional financial support.

## ANNEX V

### **Rules on the use of force, including the supply, training, control and use of service firearm weapons and non-lethal equipment applicable to the Agency's statutory staff when acting as team members during their deployment from the European Border and Coast Guard standing corps**

#### **1. GENERAL PRINCIPLES GOVERNING THE USE OF FORCE AND WEAPONS**

For the purposes of this Regulation, the 'use of force' refers to recourse by the Agency's statutory operational staff to physical means for the purposes of performing its functions or to ensure self-defence, that include the use of hands and body, the use of any instruments, weapons or equipment and firearms.

The use of force and weapons by members of the teams deployed from the Agency's statutory operational staff shall comply with the principles of necessity, proportionality, and precaution (the "core principles") as set out below.

##### *The Principle of Necessity*

Use of force, whether through direct physical contact, or by use of weapons or equipment, shall be exceptional and shall only take place when it is strictly necessary to ensure the performance of the Agency's duties or in self-defence. Force may only be used as a last resort, after every reasonable effort has been made to resolve a situation using non-violent means including by means of persuasion, negotiation, or mediation. The use of force or coercive measures shall never be arbitrary or abusive.

##### *The Principle of Proportionality*

Whenever the lawful use of force or firearms is unavoidable, the Agency's statutory operational staff shall act in proportion to the seriousness of the offence and the legitimate objective to be achieved. During operational activities, the proportionality principle should guide both the nature of force used (e.g. the need for use of weapons) as well as the extent of force applied. The Agency's statutory operational staff shall not use more force than is absolutely necessary to achieve the legitimate law enforcement objective. If a firearm is used, the Agency's statutory operational staff shall ensure that such use causes the least possible injuries and minimizes injury or damage to the greatest possible extent. The principle requires the Agency to provide equipment and self-defensive tools for its statutory staff necessary to enable the appropriate level of force to be applied.

##### *The Duty of Precaution*

Operational activities carried out by the Agency's statutory operational staff shall fully respect and aim to preserve human life. All necessary steps that can minimise the risk of injury and damage during operations shall be done. This obligation includes a general obligation for the Agency's statutory operational staff to provide clear warnings of the intention to use force unless provision of such a warning would unduly place the members of the teams at risk or would create a risk of death or serious harm to others, or would be clearly inappropriate or ineffective in the particular circumstances.

## **2. PRACTICAL RULES FOR USE OF FORCE, SERVICE WEAPON, AMMUNITION AND EQUIPMENT**

### **General practical rules for the use of force, weapons and other equipment**

In accordance with Article 83(3), the Agency's statutory operational staff shall exercise their executive power, including, the use of force, under the command and control of the host Member State and may only use force, including weapons, ammunition and equipment, following the receipt of authorisation from the competent authorities of the host Member State and in the presence of the border guards of the host Member State. Nevertheless, the competent authorities of the host Member State may authorize, with the consent of the Agency, the latter's statutory operational staff to use force in the absence of officers of the host Member State.

The use of force and weapons by the Agency's statutory operational staff shall:

- (a) comply with the Agency's Code of Conduct
- (b) respect fundamental rights as guaranteed under international and Union law, including, in particular, under the Charter of Fundamental Rights, the European Convention on Human Rights, the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (1990), and the UN Code of Conduct for Law Enforcement Officials (1979)
- (c) comply with the core principles referred to in Part I.

### **Specific practical rules for the most commonly used instruments of force in law enforcement (elements of the personal equipment of the Agency's statutory operational staff)**

In accordance with the core principles, the use of force is only permissible to the extent necessary for achieving the immediate law enforcement aim, and only after:

- attempts to resolve a potentially violent confrontation by means of persuasion, negotiation, mediation have been exhausted and failed;
- a warning on the intent to use force has been provided.

In case where it is necessary to escalate the level of intervention (for example, deployment of the use of a weapon or of a different form of weapon), clear warning of such an escalation should also be provided unless provision of such a warning would unduly place the members of team at risk or would create a risk of death or serious harm to others, or would be clearly inappropriate or ineffective in the particular circumstances.

### ***Firearms***

The Agency's statutory operational staff shall not use firearms against persons except in the following circumstances, and only when less extreme means are insufficient to achieve the necessary objectives:

- the Agency's statutory operational staff may use firearms only as a last resort, in an extreme emergency, especially if there is any risk that bystanders might be endangered;
- to defend themselves or others against an imminent threat of death or serious injury;
- to prevent an imminent threat of death or serious injury;
- to repel an actual attack or prevent an impending dangerous attack on essential institutions, services or facilities;

Prior to the use of firearms, operational staff of the Agency must provide a clear warning on the intention of using such arms. Warnings may be provided by statement or by the firing of warning shots.

### ***Non-lethal weapons***

#### **Baton**

Approved batons may be used as primary source of defence or as weapons, if appropriate, in line with the core principles, as follows:

- when lesser use of force is considered clearly unsuitable for the purpose;
- to avert an actual or impending attack on property;

Prior to the use of batons, operational staff of the Agency must provide a clear warning on the intention of using batons. In using batons, deployed operational staff shall always aim to minimise the risk of injury suffered and avoid contact with the head.

#### **Lachrymatory agents (e.g. pepper spray)**

Approved lachrymatory agents may be used as a source of defence or as weapons, if appropriate, in line with the core principles, as follows:

- when lesser use of force is considered clearly unsuitable for the purpose;
- to avert an actual or impending attack

### ***Other equipment***

#### **Handcuffs**

- Shall only be placed on persons who are considered to represent a danger to themselves or to others to ensure their safe detention or transportation and the safety of the Agency's statutory operational staff and other team members.

## **3. CONTROL MECHANISM**

The Agency shall provide the following safeguards in relation to the use of force, weapons, ammunition and equipment, and shall provide a stock taking in its Annual Report.

### **Training**

The training provided in accordance with Article 62(2) shall cover theoretical and practical aspects in relation to the prevention and the use of force. The theoretical training shall incorporate psychological training (including training in resilience and working in situations of high pressure), as well as techniques to prevent the use of force, such as negotiation and mediation. The theoretical training shall be followed by an obligatory and adequate theoretical and practical training on the use of force, weapons, ammunition and equipment. The practical training, to ensure a common practical understanding and approach, shall be concluded, by a simulation relevant for the activities to be carried out during the deployment.

### **Use of narcotics, drugs and alcohol consumption**

The Agency's statutory operational staff shall not consume alcohol while on duty or at a reasonable time prior to commencing duty.

They shall not possess or use narcotics or drugs, unless prescribed on medical grounds. Staff requiring drugs for medical purposes shall immediately inform his or her immediate superior

of such a requirement. Participation in operational activities may be reviewed having regard to potential effects and side-effects associated with the use of the substance.

The Agency shall establish a control mechanism to ensure that its statutory operational staff carry out their functions without any influence of use of narcotics, drugs or alcohol. This mechanism shall be based on a regular medical test of the staff concerning possible consumption of narcotics, drugs or alcohol. Any positive results found at these tests shall be immediately reported to Executive Director of the Agency.

### **Reporting**

Any incidents involving the use of force shall be immediately reported through the chain of command to the coordination structure relevant for each operation and to the Fundamental Rights Officer and Executive Director of the Agency. The report shall provide full details of the circumstances in which such use arose.

### **Duty to cooperate and inform**

The Agency's statutory operational staff and any other participants in the operations shall cooperate in the gathering of facts of any incident which was reported during an operational activity.

### **Complaints mechanism**

Any person may report suspected breaches by the Agency's statutory operational staff of the rules on the use of force applicable under this Annex under the complaint mechanism provided for in Article 107.

### **Sanctions**

Without prejudice to Article 86, in case the Agency establishes that a member of its statutory operational staff has performed activities in breach of rules applicable under this Regulation, including fundamental rights protected under the Charter, the European Convention on Human Rights and under international law, the Executive Director shall take adequate measure which may include the immediate recall of the staff member from the operational activity, and any disciplinary measures in accordance with the Staff Regulation, including the removal of the staff member from the Agency.

### **Role of the Fundamental Rights Officer**

The Fundamental Rights Officer shall verify and provide feedback on the content of the inception and refreshment training with special regards to their fundamental rights aspects and the situation where the use of force is necessary, and ensure relevant preventive techniques are included.

The Fundamental Rights Officer shall report on the respect of fundamental rights in law enforcement practice in the host Member State. This report shall be submitted to the Executive director and shall be taken into account while designing the operational plan.

The Fundamental Rights Officer shall ensure that an incidents related to the use of force, use of weapons, ammunition and equipment shall be reported without delay to the Executive Director.

All activities related to the use of force, weapons, ammunition and equipment shall be regularly monitored by the Fundamental Rights Officer, and all incidents shall be reported in the Fundamental Rights Officer's reports as well in the Annual Report of the Agency.

#### **4. PROVISION OF SERVICE WEAPONS**

##### **Authorization of weapons**

For the purposes of determining the exact service weapons, ammunition and other equipment to be used by the Agency's statutory operational staff, the Agency shall establish an exhaustive list of items to be included in the personal equipment set.

The personal equipment set shall be used by all the Agency's statutory operational staff deployed as team members of the three types of teams deployed from the European Border and Coast Guard standing corps. The Agency may also complement the personal equipment set by additional weapon, ammunition or other equipment specific for the purpose of carrying specific tasks within one or two types of teams.

The Agency shall ensure for its statutory operational staff that all the provided equipment, including firearms, are compliant with all the necessary technical standards tools.

Weapons, ammunition and equipment that are authorised for use shall be listed in the operational plan in line with the requirements on admissible and prohibited weapons of the host Member State.

##### **Prohibition of weapons**

The host Member State may prohibit the carrying of certain service weapons, ammunition and equipment in accordance with Article 83(2) second indent.

##### **Instructions for duty period**

Weapons, ammunition and equipment can be carried and used during operations. Carrying or using them off duty periods is not allowed. The Agency shall establish specific rules and measures to facilitate the storage of weapons, ammunition and other equipment of the Agency's statutory operational staff during off duty periods in secured facilities.

## ANNEX VI

### CORRELATION TABLE

<b>Regulation (EU) 2016/1624</b>	<b>Regulation (EU) No 1052/2013</b>	<b>Joint Action 98/700/JHA</b>	<b>This Regulation</b>
Article 1 first sentence	--	--	Article 1 paragraph 1
Article 1 second sentence	--	--	Article 1 paragraph 2
Article 2 introductory wording	Article 3 introductory wording	--	Article 2 introductory wording
Article 2 point 1	--	--	Article 2 point 1
--	--	--	Article 2 point 2
Article 2 point 2	--	--	Article 2 point 3
--	--	--	Article 2 point 4
--	--	--	Article 2 point 5
--	Article 3 points a	--	--
Article 2 point 3	--	--	Article 2 point 6
--	Article 3 point b	--	Article 2 point 7
--	Article 3 point c	--	Article 2 point 8
--	--	--	Article 2 point 9
--	Article 3 point d	--	Article 2 point 10
--	Article 3 point f	--	Article 2 point 11
Article 2 point 16	Article 3 point e	--	Article 2 point 12
--	Article 3 point g	--	Article 2 point 13
--	Article 3 point i	--	Article 2 point 14
--	Article 3 points h	--	--
--	--	--	Article 2 point 15
Article 2 point 4	--	--	Article 2 point 16
Article 2 point 8	--	--	Article 2 point 18
Article 2 point 9	--	--	Article 2 point 19
Article 2 point 5	--	--	Article 2 point 20
Article 2 point 6	--	--	Article 2 point 21
Article 2 point 7	--	--	Article 2 point 22
Article 2 point 10	--	--	Article 2 point 23
--	--	--	Article 2 point 24
Article 2 point 11	--	--	Article 2 point 25

Article 2 point 12	--	--	Article 2 point 26
Article 2 point 13	--	--	Article 2 point 27
Article 2 point 14	--	--	Article 2 point 28
Article 2 point 15	--	--	Article 2 point 29
--	--	--	Article 2 point 30
--	--	--	Article 2 point 31
Article 4 points a to d	--	--	Article 3 points a to d
Article 4 point e	--	--	Article 3 points e and f
Article 4 points f to k	--	--	Article 3 points g to h
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Article 6	--	--	Article 5
Article 7	--	--	Article 6
Article 5 paragraph 1	--	--	Article 7 paragraph 1
--	--	--	Article 7 paragraph 2
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--	--	--	Article 8 paragraphs 1 to 4
Article 3 paragraph 2	--	--	Article 8 paragraph 5
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--	--	--	Article 8 paragraphs 7 and 8
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Article 8 paragraph 1 point a	--	--	Article 10 paragraph 1 point 1
--	--	--	Article 10 paragraph 1 point 2
Article 8 paragraph 1 points b to h	--	--	Article 10 paragraph 1 points 3 to 10
--	Article 6	--	Article 10 paragraph 1 point 5
--	--	--	Article 10 paragraph 1 point 11
Article 8 paragraph 1 point i	--	--	Article 10 paragraph 1 points 12 i and ii



Article 8 paragraph 1 points j k	--	--	--
--	--	--	Article 10 paragraph 1 points 12 iii
--	Article 6 paragraph 1 points bcd	--	--
Article 8 paragraph 1 point l	--	--	Article 10 paragraph 1 point 13
--	Article 6 paragraph 2	--	--
Article 8 paragraph 1 points n and o	--	--	Article 10 paragraph 1 points 14 and 15
Article 8 paragraph 1 point m	--	--	Article 10 paragraph 1 point 16
--	--	--	Article 10 paragraph 1 points 17 to 21
Article 8 paragraph 1 points p and q	--	--	Article 10 paragraph 1 points 22 and 23
--	Article 6 paragraph 1 point a	--	Article 10 paragraph 1 point 25
Article 8 paragraph 1 points r and s	--	--	Article 10 paragraph 1 points 26 and 27
Article 8 paragraph 1 points t and u	--	--	--
--	--	--	Article 10 paragraph 1 points 28 and 29
Article 8 paragraph 2	--	--	Article 7 paragraph 5
--	Article 11	--	points included in Article 10
Article 9	--	--	Article 11
Article 10 paragraph 3 2nd and 4th sentence	--	--	Article 12 paragraph 3
Article 10 paragraph 3 1st and third sentence	--	--	--

--	--	--	Article 12 paragraph 4
Article 10 paragraphs 1 and 2	--	--	Article 12 paragraphs 1 and 2
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--	--	--	Article 13 second half
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--	Article 1	--	Article 18
--	Article 2 paragraph 1	--	Article 19 paragraph 1
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--	Article 4 paragraph 1 points a b	--	Article 20 paragraph 1 points a b
--	Article 4 paragraph 1 points d	--	Article 20 paragraph 1 points c
--	Article 4 paragraph 1 points c e f	--	--
--	--	--	Article 20 paragraph 1 points d e f
--	Article 4 paragraph 4	--	--
--	Article 4 paragraphs 2 and 3	--	Article 20 paragraphs 2 and 3
--	--	--	Article 21 paragraph 3 point i
--	Article 5	--	Article 21 (but 3 i)

--	Article 17	--	Article 22
--	Article 21 paragraphs 1 and 2	--	Article 23
--	Article 21 paragraph 3	--	Article 24 paragraph 1
--	Article 22 paragraph 1	--	--
--	--	--	Article 24 paragraphs 2 and 3
--	Article 10 paragraph 5	--	Article 25 paragraph 2 points (included in the general definition of the layers)
--	Article 8	--	Article 25 paragraphs 1 and 2
--	--	--	Article 25 paragraphs 3 to 5
--	Article 9 paragraph 1	--	Article 26 paragraph 1
--	Article 9 paragraph 2 points a) to e)	--	Article 26 paragraph 2 points a) to e)
--	--	--	Article 26 paragraph 2 point f
--	Article 9 paragraph 2 points f) to k)	--	Article 26 paragraph 2 points g) to h)
--	Article 9 paragraph 3	--	Article 25 paragraph 5 points in the implementing act
--	Article 9 paragraph 4	--	Article 26 paragraph 3 first half
--	Article 9 paragraph 5 points a first half	--	Article 25 paragraph 5 points in the implementing act
--	--	--	Article 26 paragraph 3 second half
--	Article 9 paragraph 5 points a second half	--	Article 26 paragraph 4

--	Article 9 paragraph 5 points b	--	Article 25 paragraph 5 points in the implementing act
--	Article 9 paragraphs 6,7,8,10	--	Article 25 paragraph 5 points in the implementing act
--	Article 9 paragraph 9 points a and b	--	Article 25 paragraph 5 points in the implementing act
--	Article 9 paragraphs 9 introductory wording	--	Article 26 paragraph 5
--	Article 10 paragraphe 2 points a,b,f	--	Article 27 paragraphe 2 points a,b,f
--	Article 10 paragraph 2 points c	--	Article 25 paragraph 5 points in the implementing act
--	Article 10 paragraphe 2 points d,e	--	Article 27 paragraph 2 points c
--	--	--	Article 27 paragraph 2 points e
--	Article 10 paragraph 3	--	Article 27 paragraph 3
--	Article 10 paragraph 4	--	Article 27 paragraph 6
--	Article 10 paragraphs 1 and 3	--	Article 27 paragraphs 1 and 3
--	Article 10 paragraph 5	--	Article 27 paragraphs 4 and 5
--	--	--	Article 28
--	Article 12 paragraph 1	--	Article 29 paragraph 1
--	Article 12 paragraph 2	--	Article 29 paragraph 2 points a to e
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--	Article 14	--	Article 31 points First sentence
--	--	--	Article 31 Second sentence
--	--	--	Article 31 Second part
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Article 13	--	--	Article 33 all paragraphs but 9
			Article 33 paragraph 9
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--	Article 15	--	Article 35 (but 1d)
--	--	--	Article 36 paragraph 3 points d
--	Article 16 paragraph 5	--	Article 36 paragraph 4
--	Article 16 paragraphs 1,2,3	--	Article 36 paragraphs 1,2,3
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--	Article 16 paragraph 4 point a	--	Article 37 paragraph 2 point f
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--	--	--	Article 49 paragraph 1 point c
Article 27 paragraph 1 point c	--	--	--
Article 27 paragraph 1 except c	--	--	Article 49 paragraph 1 except c
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Article 52 paragraph 2	Article 18 paragraph 5	--	Article 69 paragraph 3
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Article 47 paragraph 2 point c	--	--	Article 89 paragraph 2 point d
Article 47 paragraphs 1 and 3	--	--	Article 89 paragraphs but 2 c
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Article 61 points c and d	--	--	Article 97 points d and e
Article 62 paragraph 2 points a to z	--	--	Article 98 paragraph 2 points 1,2,4 and 6 to 27

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Article 62 paragraph 2	--	--	Article 98 paragraph 2 all points but 3 and 5
Article 62 paragraphs 1 and 3 to 8	--	--	Article 98 paragraphs 1 and 3 to 8
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Article 67	--	--	Article 103
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Article 68	--	--	Article 104 all 2 but points p and q
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--	Article 22 paragraphs 2 and 4	--	Article 116 paragraph 3
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