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### OUTCOME OF PROCEEDINGS

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From: General Secretariat of the Council  
To: Delegations

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Subject: Proposal for a Regulation of the European Parliament and of the Council on the European Border and Coast Guard and repealing 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

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At its meeting on 1 April 2019, the Permanent Representatives Committee agreed on the final compromise text with a view to agreement, as set out in the Annex.

Changes to the Commission proposals are marked in ***bold/italics*** for additions and in ~~strikethrough~~ for deletions.

**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>1</sup>,

Having regard to the opinion of the Committee of the Regions<sup>2</sup>,

Acting in accordance with the ordinary legislative procedure,

Whereas:

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<sup>1</sup> OJ C , , p. .

<sup>2</sup> OJ C , , p. .

(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 Council Regulation (EC) No 2007/2004<sup>3</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’) *commonly referred to as Frontex*, 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.~~

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<sup>3</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).

(4) Since the beginning of the migratory crisis in 2015, the Commission has taken up important initiatives to strengthen *and has proposed a series of measures with a view to strengthening* the protection of the Union borders *and restoring the normal functioning of the Schengen area*. 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~~ *swiftly* 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, *combating cross-border crime* 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 *which should gradually but swiftly reach the strategic objective of capacity* of 10 000 operational staff, *as set out in Annex I*, with executive powers, *if applicable*, to effectively support Member States on the ground in their efforts to protect the external borders, fight ~~secondary movements~~ *cross-border crime* and significantly step up the effective *and sustainable* return of irregular migrants. *This represents the maximum available capacity to effectively address existing and future operational needs for borders and return operations in the Union and third countries, including rapid reaction capacities to face future crisis.*

*(5a) The Commission should carry out a review of the overall number and composition of the European Border and Coast Guard standing corps, including the size of the individual Member State's contributions to the standing corps, as well as of its training, expertise and professionalism. By March 2024, the Commission shall, where necessary, submit appropriate proposals to amend Annexes I, III, IV and Va. Where the Commission does not present a proposal, it shall explain the reason thereof.*

*(5b) The implementation of this Regulation, in particular the establishment of the European Border and Coast Guard standing corps, including after the review, should be subject to the framework and the limits of the Multiannual Financial Framework.*

(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 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.~~

***(8a) European integrated border management, based on the four-tier access control model, comprises measures in third countries, such as under the common visa policy, measures with neighbouring third countries, border control measures at the external borders, risk analysis and measures within the Schengen area and return.***

(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. ***The activities of the Agency should be complementary to the efforts of the Member States.***

(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.

***(10a) The technical standards for information systems and software applications should be aligned with the standards used by eu LISA for other IT systems in the area of freedom, security and justice.***

~~To be moved down to the other recitals on standards~~

(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 **challenges** ~~higher impacts~~ at the external borders, ~~for~~ ~~on~~ contingency planning and ~~to~~ ~~for~~ ~~coordinate~~ **coordinating** the long-term development of capabilities both in terms of recruitment and training but also for the acquisition and development of equipment.

*(14a) The Agency should develop technical standards for information exchange as foreseen in this Regulation. In addition, for the effective implementation of the Schengen Borders Code, and with due respect for the responsibility of the Member States, the common minimum standards for external border surveillance should be developed. To this end, the Agency may contribute in defining common minimum standards in accordance with the responsibility of the Member States and the Commission. These common minimum standards of the external border surveillance should be defined in accordance with the type of borders, the impact levels attributed by the Agency to each external border section and other factors such as geographical particularities. Their development should take into account possible limitations deriving from national legislation.*

(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, *the United Nations Convention relating to the Status of Stateless Persons* 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>4</sup>. *Sea operations should be carried out in a way that, in all instances, ensure the safety of the persons intercepted or rescued, the safety of the participating units and that of third parties.*

(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 *and according to the subsidiarity principle.*

(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 *and liability in particular in terms of the exercise of executive powers by the statutory staff.*

(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.

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<sup>4</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).



(21) 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. *Where this data includes personal data, Union law on data protection should apply in full.*

*(22a) The Communication Network provided for in this Regulation should be based on and replace the EUROSUR Communication Network developed in the framework of Regulation (EU) No 1052/2013 of the European Parliament and of the Council<sup>5</sup>. The Communication Network should be used for all secured information exchanges within the European Border and Coast Guard. Its level of accreditation should be increased up to the level of Confidential UE/EU Confidential in order to improve information assurance between the Member States and with the Agency.*

(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 and the Agency with the infrastructure and tools needed to improve their situational awareness and *increase* 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.

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<sup>5</sup> *Regulation (EU) No 1052/2013 of the European Parliament and of the Council establishing the European Border Surveillance System (Eurosur) (OJ L 295, 6.11.2013, p. 11).*

***(23a) The role of the national coordination centre to coordinate and exchange information among all authorities with a responsibility for external border control at national level is without prejudice to the competences established at national level regarding planning and implementation of border control activities.***

(24) 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 ***European*** integrated border management ~~such as returns~~.

(26) The quality of the information exchanged between the Member States and the Agency ~~is a prerequisite to~~ ***and the timeliness for the exchange of such information are prerequisites for*** 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.

(26) 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.

(27) 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. ***The provision of situational awareness within the Schengen area should not lead to operational activities by the Agency at the internal borders of the Member States.***

(28) 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. *Air border surveillance aims at detecting and monitoring such suspicious flights crossing or intending to cross EU external borders and performing related risk analysis with a view to triggering reaction capabilities by the competent authorities of the EU and the Member States. For this purpose, interagency cooperation at EU level should be promoted between the Agency, the network manager of the European air traffic management network (EUROCONTROL) and the European Aviation Safety Agency (EASA). Where relevant, Member States should be able to receive information on suspicious external flights and react accordingly. The Agency should monitor and support research and innovation activities in this area.*

*(28a The reporting of events related to unauthorised secondary movements in EUROSUR will contribute to the Agency monitoring of migratory flows towards and within the Union for the purpose of risk analysis and situational awareness. The implementing act referred to in Article 25(3) will further define the type of reporting to best meet this objective.*

(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 *including in the framework of search and rescue operations.*

(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, **the phenomenon of irregular-illegal** secondary movements of third-country nationals within the Union **in terms of trends, routes and volume**, 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.

(33) Given its activities at the external borders, the Agency should contribute to preventing and detecting ~~serious crime with a~~ cross-border **crime 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~~ The 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,~~ **In line with** Article 1(2) of Council Directive 2002/90/EC<sup>6</sup> ~~allows~~ **which provides that** Member States **may decide** not to impose sanctions where the aim of the behaviour is to provide humanitarian assistance to migrants.

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<sup>6</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).

35) In a spirit of shared responsibility, the role of the Agency should be to monitor regularly the management of the external borders, *including the respect for fundamental rights in border management and return activities of the Agency*. 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 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>7</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.

***While the Schengen evaluation mechanism is the primary method for evaluating the implementation of and compliance with Union legislation in the Member States,*** 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.

(38) 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-critical*** impact level should be ***temporarily*** established, corresponding to a situation where the Schengen area is at risk and where the Agency should intervene.

***(39a) If a high or critical impact level is attributed to a maritime border section because of a rise of illegal immigration, the Member States concerned shall take into account this information for the planning and conduct of search and rescue operations, since such situation could generate an increase of the demand for assistance for persons in distress at sea.***

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<sup>7</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).

(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 ***an increased number of arrivals of irregular migrants*** ~~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 ***with the agreement of the Member State concerned***, 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 ***with the agreement of the Member State concerned***, 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. ***Where the crew deployed with the technical equipment of a Member State originate from that Member State, the crew should count as part of that Member State's contribution to the standing corps.*** 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 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~~ ***the European Asylum Support Office*** and, Europol or other relevant Union agencies. The Agency should assist the Commission in the coordination among the different agencies on the ground. ***The Commission should, in cooperation with the host Member State and the relevant Union agencies, establish the terms of cooperation at the hotspot area and be responsible for the coordination of the activities of the migration management support teams.***

(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 ***and instructions to as to how to refer persons in a vulnerable situation to the appropriate referral mechanisms.***

***(43a) Training of the standing corps should be carried out in close cooperation between the Agency and the Member States, in particular their training academies, while ensuring that the training programmes are harmonised and foster common values as enshrined in the Treaties. The Agency may, after obtaining the approval of the management board, set up an Agency training centre to further facilitate the inclusion of a common European culture in the training provided.***

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.



(45) The European Border and Coast Guard Agency and the ~~[European Union Agency for Asylum]~~ **European Asylum Support Office** 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]~~ **European Asylum Support Office** 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.

*(44a) National authorities carrying out coast guard functions are responsible for a wide range of tasks, which may include maritime safety, security, search and rescue, border control, fisheries control, customs control, general law enforcement and environmental protection. The Agency, the European Fisheries Control Agency established by Council Regulation (EC) No 768/2005 and the European Maritime Safety Agency established by Regulation (EC) No 1406/2002 of the European Parliament and of the Council should therefore strengthen their cooperation both with each other and with the national authorities carrying out coast guard functions to increase maritime situational awareness and to support coherent and cost-efficient action. Synergies between the various actors in the maritime environment should be in line with the European integrated border management and maritime security strategies.”*

(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 *statutory* 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]~~ **European Asylum Support Office**, Europol, *and when relevant experts from the European Union Agency for Fundamental Rights and other relevant Union agencies*. The Commission should ensure the necessary coordination in the assessment of needs and *cooperation of the relevant agencies within their respective mandates and establish the terms of cooperation for the* 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 *and fundamental rights*.

(48) When justified by the results of the vulnerability assessment, risk analysis or when a critical impact *level is temporarily* 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~~ **propose to the Council a decision identifying** the measures to be implemented by the Agency and ~~require~~ **at the same time requiring** the Member State concerned to cooperate with the Agency in the implementation of those measures. **The implementing power to adopt such a decision should be conferred on the Council to decide because of the potentially politically sensitive nature of the measures, which are likely to touch on national executive and enforcement powers.** The Agency should then determine the actions to be taken for the practical execution of the measures indicated in the ~~Commission~~ **Council** 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~~ **Council** 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~~ **Council** 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~~**four** 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~~**long-term** durations ~~and~~, staff provided by Member States for ~~short term~~**short-term** deployments **and staff forming part of the reserve for rapid reaction for rapid border interventions**. 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. ***The actual size of the deployments of the standing corps should depend on the operational needs.***

(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 defined in the relevant national laws or, for the staff of the Agency, in accordance with Annex V. ***Where statutory staff of the Agency exercise executive powers, the Agency should be liable for any damage caused.***

(53) Member States should ensure their respective contributions to the European Border and Coast Guard standing corps in accordance with Annex 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.

***(53a) When selecting the numbers and profiles to be indicated in the decision of the management board referred to in Article 55(4), the executive director should apply the principle of equal treatment and proportionality in particular with regard to national capabilities of Member States.***

*(53b) The exact timing for short term deployments from the standing corps, and for making available technical equipment co-financed under the Specific Actions of the Internal Security Fund or any other dedicated Union funding, should be agreed between each Member State and the Agency through the annual bilateral negotiations, taking into account capacities and proportionality. When requesting the national contributions, the ED should apply as a general rule the principles of proportionality and equal treatment of Member States aiming to prevent situations that substantially affect the discharge of national tasks in one Member State by requesting the deployment of the annual contributions of that Member State in one particular period of 4 months. Such modalities include the possibility for Member States to fulfil the obligatory deployment periods through non-consecutive periods. With regard to short term deployment to the standing corps, Member States may also fulfil their obligations for deployment under Article 58 in a cumulative manner, through the deployment of more staff for shorter periods or through deployments of the same staff members for more than 4 months in accordance with the planning agreed through annual bilateral negotiations.*

*(53c) Without prejudice to the timely conclusion of the operational plan regarding sea operations, the Agency should provide to the participating Member States, at the earliest possible stage, specific information on the application of the relevant jurisdiction and applicable law, in particular on the prerogatives of the commanders of ships and aircrafts, the conditions of the use of force and the imposition of restrictive or custodial measures.*

(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. ***This should take into account the adequate time for recruitment and training, therefore it should be based to the n+2 rule.*** 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 ***a consecutive or non-consecutive period of at least 4 months or on a pro-rata basis for deployments for a consecutive or a non-consecutive period of less than 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~~ ***should*** ensure the compliance with the principles of co-financing and no double funding.

***(55a) In order to alleviate the possible impact on the national services related to the recruitment of the Agency's statutory staff for the EBCG standing corps, support should be provided to the relevant services of Member States to cover training investments for new personnel replacing such departing personnel.***

(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 ***and procedure to ensure the civil and criminal liability of the members of the teams.***

(57) In order to allow for the effective deployments from the European Border and Coast Guard standing corps as of 1 January 2021~~0~~, certain decisions and implementing measures should be taken and put in place as soon as possible. ***Therefore, the Agency, together with the Member States and the Commission, should engage in the preparation of such implementing measures and decisions for adoption by the Management Board. This advanced preparatory process should encompass the relevant recruitment by the Agency and the Member States as referred to in Article 120 of this Regulation.*** ~~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 ~~2020~~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 2019~~8~~. To that end, these provisions should be only repealed with effect from 1 January 2021~~0~~.

(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~~ **short-term** deployment by national authorities **and the reserve for rapid reaction**. 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. **Those assets should be authorised by the Member States as being on government service**. 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. **It is necessary to ensure the sustainability of the Agency by means of future multiannual financial frameworks and to maintain comprehensive European Integrated Border Management.**



(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.

***(66a) In the spirit of inter-agency cooperation being part of the Integrated Border Management, the Agency shall closely cooperate with all relevant EU Agencies, in particular with Europol and the European Asylum Support Office. Such cooperation should take place at the level of Headquarters, in operational areas and, when relevant, at the level of antenna offices.***



***(66b) The Agency should further develop common core curricula and adequate training tools for border management and return, including specific training in the protection of vulnerable persons including children. It should also offer additional training courses and seminars related to integrated border management tasks, including for officers of the competent national bodies. The Agency should provide the members of the European Border and Coast Guard standing corps with specialised training relevant to their tasks and powers. This should include training on relevant Union and international law and on fundamental rights. The Agency should be authorised to organise training activities in cooperation with Member States and third countries on their territory.***

(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>8</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.

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<sup>8</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).

*(69a) The Agency should allow, subject to an agreement of the Member State concerned, the Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) of the Council of Europe to conduct visits to return operations carried out by it, within the framework of the monitoring mechanism established by the members of the Council of Europe under the Optional Protocol to the Convention against Torture.*

(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 **and dignified** conduct of return operations. The assistance should also include ~~setting up, operating and maintaining a central system~~ **the operation and maintenance of a platform for the exchange of data and** ~~for processing all information and data~~ necessary for the Agency to provide technical and operational assistance in accordance with the Regulation., **The platform should have a communication infrastructure enabling automated transmission of statistical data** ~~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 **or liability** under Union or international law, in particular as regards compliance with the principle of non-refoulement, **the prohibition of torture and inhuman or degrading treatment.**

(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 Asylum Support Office***, 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 ***important*** element of European Integrated Border Management. It should serve to promote European border management and return standards, to exchange information and risk analysis, and, 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.

***(75bis) Where the Commission recommends to the Council to authorize it to negotiate a status agreement with a Third Country, the Commission should assess the fundamental rights situation relevant to the areas covered by the Status agreement in that third Country and inform the European Parliament thereof.***

(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.

***(78a) The assistance to third countries should complement the Agency's support for Member States in the application of Union measures relating to the implementation of the european integrated border management.***

***(78b) The bi- and multilateral agreements concluded by Member States with third countries in the areas covered by Integrated Border Management may contain security sensitive information. When notified to the Commission, such information should be handled by the Commission in accordance with the applicable security rules.***

(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 ***once the relevant legal act on the FADO system and replacing Joint Action 98/700/JHA has been adopted by the co-legislators.***

(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 , 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 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. ***To this end, the Agency should be able to adopt internal rules on such restrictions.***

(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 69 of [~~Regulation (EU) 45/2001~~] **Regulation (EU) 2018/1725** 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 4950(1)(d) of [~~Regulation (EU) 2018/172545/2001~~] are met.

*(86a) As regards Member States, the transfer of any personal data to third countries should be carried out in accordance with Regulation 2016/679 and Directive 2016/680, as applicable. Same as for the Agency, third countries of return are often not subject to adequacy decisions adopted by the Commission under Article 45 of Regulation 2016/679 and Article 36 of Directive 2016/680, as applicable. Furthermore, readmission agreements that have been concluded or are being negotiated by the Union or the Member States and which provide for appropriate safeguards for the transfer of data to third countries pursuant to Article 45 of Regulation 2016/679 and to Article 37 of Directive 2016/680, as applicable, cover a limited number of third countries. In those circumstances, and as an exception to the requirement for any adequacy decisions or appropriate safeguards, transfer of personal data to third country authorities should be allowed for the purposes of implementing the return policy of the Union. It should be possible to use the derogation provided for in Article 49 of Regulation 2016/679 and Article 38 of Directive 2016/680, as applicable, subject to the conditions set out in those articles.*

(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. ***The fundamental rights officer should be provided with the resources and staff necessary to enable him or her to effectively perform all the tasks in accordance with this Regulation. The staff provided to the fundamental rights officer should have the skills and seniority that correspond to the expansion of activities and powers 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.

***(90a) Given the involvement of the European Parliament in the matters governed by this regulation, the Chair person of the management board could invite an expert of the European Parliament to attend the meetings of the management board.***

***(90b) When preparing the final programming document the management board should take into account the recommendations of the Inter-Institutional Working Group on agencies' resources.***

(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 Agency's budget should be prepared in accordance with the principle of performance-based budgeting, taking into account the Agency's objectives and the expected results of its tasks.*** 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. ***In exceptional situations where the available budget is deemed insufficient and the budgetary procedure does not allow adequate response to fast developing situations the Agency should have the possibility to receive grants from Union funds to fulfil its tasks.***

***(91a) The Executive Director, in his function of authorising officer, should on a regular basis assess the financial risks related to the Agency's activities and take the necessary mitigating measures in accordance with the financial framework applicable to the Agency and inform the Management Board accordingly.***

(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.

***(92a) Under the assumption of shared responsibility, the Agency should require the staff it employs, in particular the standing corps, including the statutory staff deployed in operational activities, to possess the same level of training, special expertise and professionalism as staff seconded or employed by the Member States. Therefore, the Agency should ascertain, by means of review and evaluation, that its statutory staff conduct themselves properly when it comes to operational activities in the field of border control and return.***

~~(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>9</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>10</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>11</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 (EU) No 45/2001 **2018/1725 of the European Parliament and of the Council**<sup>12</sup>.

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<sup>9</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>10</sup> OJ L 136, 31.5.1999, p. 15.

<sup>11</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).

<sup>12</sup> **1 Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p. 39).**

*(98a) The Commission should carry-out an evaluation of this Regulation. The evaluation should also assess the attractiveness of the Agency as an employer for the recruitment of statutory staff with a view of ensuring quality of the candidates and geographical balance.*

(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 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>13</sup>.

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<sup>13</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).

(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>14</sup>, which fall within the area referred to in point A of Article 1 of Council Decision 1999/437/EC<sup>15</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>16</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>17</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 2008/146/EC<sup>18</sup>.

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<sup>14</sup> OJ L 176, 10.7.1999, p. 36.

<sup>15</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>16</sup> OJ L 188, 20.7.2007, p. 19.

<sup>17</sup> OJ L 53, 27.2.2008, p. 52.

<sup>18</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).

(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>19</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>20</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>21</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.

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<sup>19</sup> OJ L 160, 18.6.2011, p. 21.

<sup>20</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>21</sup> OJ L 243, 16.9.2010, p. 4.



(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>22</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 2002/192/EC<sup>23</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.

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<sup>22</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).

<sup>23</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).

(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 ~~Data Protection~~Data Protection Supervisor was consulted in accordance with Article ~~4528(d2)~~ of Regulation (EC) n° 45/2001 **on 7 November** 2018 and issued an opinion on **30 November 2018**.

(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,

# 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 of those external borders efficiently **and in full compliance with fundamental rights** as well as increasing the efficiency of the common return policy ~~[as a key component of sustainable migration management]~~

~~The~~ **This** Regulation addresses migratory challenges, ~~including return,~~ and potential future **challenges and** threats at ~~those~~ **the external** borders. **It ensures a high level of internal security within the Union in full respect for fundamental rights, while safeguarding the free movement of persons within the Union. It contributes to the detection, prevention and combating of cross-border crime at the external 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;~~

‘border crossing point’ means border crossing point as defined in point 8 of Article 2 of Regulation (EU) 2016/399;

‘border control’ means border control as defined in point 10 of Article 2 of Regulation (EU) 2016/399;

*(3a) 'border checks' means border checks as defined in point 11 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<sup>24</sup>;

(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;

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<sup>24</sup> ~~Clarified in a recital.~~

- (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 ***which is relevant for managing the external borders through risk analysis and situational awareness***;
- (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": ~~It~~ ***in*** accordance with the ~~three~~ ***four*** categories ~~defined under~~ ***set out in*** 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) ***or deployed from the Reserve for rapid reaction for rapid border interventions (category 4)***. Operational staff is to act as members of border management teams, migration management support teams or return teams having executive powers ***if applicable***. Operational staff also includes the statutory staff responsible for the functioning of the central unit of ETIAS ~~but~~ ***not deployable as team members***;

(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]~~ ***the European Asylum Support Office*** and from Europol, ***and when relevant experts from European Union Agency for Fundamental rights and*** ~~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 **created at the request of the host Member State** 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~~ **an administrative or judicial decision or act, stating or declaring the stay of a third-country national to be illegal and imposing or stating an obligation to return that respects Directive 2008/115/EC** 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~~ **which is enforceable**;

(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 *[new ILO regulation]*.

### Article 3

#### **European Integrated Border Management**

European Integrated Border Management shall consist of the following components<sup>25</sup>:

- (a) border control, including measures to facilitate legitimate border crossings and, where appropriate, measures related to the prevention and detection of cross-border crime **at the external borders such as focusing on** migrant smuggling, trafficking in human beings, and terrorism, and **mechanisms and procedures for** measures related to the **identification of vulnerable persons and unaccompanied minors, and for the identification of, the provision of information to and 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;
- (c) analysis of the risks for internal security and analysis of the threats that may affect the functioning or security of the external borders;

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<sup>25</sup> ~~Four tier access control model will be mentioned as a recital (text of Recital 3 of EBCG 1.0).~~



- (d) information exchange and cooperation *in the areas covered by this regulation* between Member States, *as well as between Member States* and the Agency *including the support coordinated by 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. *Where appropriate, cooperation with national bodies in charge of protecting fundamental rights shall be included.*
- (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, *focusing in particular on neighbouring third countries and on those third countries which have been identified through risk analysis as being countries of origin and/or transit for ~~irregular~~ illegal migration*;
- (h) technical and operational measures within the Schengen Area which are related to border control and designed to address ~~irregular~~ *illegal migration* 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 and possible national mechanisms, to ensure the implementation of Union legislation in the area of border management;

(1) solidarity mechanisms, in particular Union funding instruments.

2. ***Fundamental rights, education and training, and research and innovation shall be overarching components in the implementation of the European Integrated Border Management.***

#### *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, ***and the European Border and Coast Guard Agency ('the Agency')*** 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 ***set out in Article 55, having the capacity of up to 10 000 operational staff, pursuant to Annex I*** ~~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, ***and return.***

4. The Agency shall contribute to the continuous and uniform application of Union law, including the Union acquis on fundamental rights, *in particular the Charter of Fundamental Rights of the European Union ('the Charter')*, 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 returns decisions~~ *as referred to in Article 49, upon request of the Member State concerned, or on initiative of the Agency and in agreement with the Member States concerned*. Member States shall retain the *sole* responsibility for issuing return decisions and *for adopting* 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, *including the respect of fundamental rights*, and in line with Article 8 establishing 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. ***The Agency shall not support any measures or be involved in any activities related to controls at internal borders. The Agency shall be fully responsible and accountable for any decisions it takes and for any activity for which it is solely responsible under this Regulation.***

5. Member States may ***cooperate*** 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 ***that is adopted in accordance with the procedure laid down in paragraph 4.***
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. ***It shall define the policy priorities and provide the strategic guidelines for a period of five years in relation to the components set out in Article 3.***

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 ~~prepare~~ **be empowered to adopt delegated acts in accordance with Article 118 a policy document** 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.~~ **The Commission shall submit it to the European Parliament and the Council for discussion. Following that discussion, the Commission shall adopt the communication establishing the multiannual strategic policy for European Integrated Border Management.**
5. In order to implement the ~~multiannual strategic policy for European Integrated Border Management~~ **delegated act** referred to in paragraph 4, the Agency shall, by decision of the management board, based on a proposal of the executive director, **prepared in close cooperation with the Member States and the Commission**, 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 ~~multiannual strategic policy for European Integrated Border Management~~. It shall promote and support the implementation of European Integrated Border Management in all Member States.
6. In order to implement the ~~multiannual strategic policy for European Integrated Border Management~~ **delegated act** referred to in paragraph 4, the Member States shall establish their national strategies for **European** integrated border management through close cooperation between all national authorities responsible for the management of **external** borders and return. Those national strategies shall be in line with Article 3, the ~~multiannual strategic policy for European Integrated Border Management~~ **delegated act** referred to in paragraph 4 and the technical and operational strategy referred to in paragraph 5.

7. ~~Forty two months~~Four years after the adoption of the ~~delegated act~~ ***the multiannual strategic policy for European Integrated Border Management***- 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.

***Member States and the Agency shall provide the Commission with the necessary information in a timely manner so that it can produce the overall evaluation. The Commission shall communicate the results of the evaluation to the European Parliament and to the Council.***

(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 ***or relevant parts thereof*** in accordance with the procedure set out in paragraph 4.

~~Also~~ ***The Agency's technical and operational strategy and the Member States' national strategies mentioned in paragraph 5 and 6 shall then be adapted where needed necessary.***

#### *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, ***including,-***

~~2.1. Integrated planning shall include~~ operational planning, contingency planning and capability development planning and shall be established in accordance with ***paragraphs 2, 3 and 4***~~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).

*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] level[s] shall be coordinated with neighbouring Member States and with the Agency with a view to implementing the necessary cross-border measures<sup>[6]</sup> and foreseeing support by 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). The operational plans or part thereof may be classified as appropriate in compliance with Commission Decisions (EU, Euratom) 2015/443 and 2015/444.*

*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 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 medium to long-term evolution of the national capabilities for border management and return.*

*The national capability development plan shall address the developments of each components of European Integrated Border Management 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.*

*4a. The plans referred to in paragraphs 3 and 4 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.*

*4b The methodology and the procedure to establish the plans referred to in paragraphs 3 and 4 shall be adopted by the Agency's Management Board, after consultation with the Member States, on a proposal by the Executive Director.*

*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 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. The capability roadmap 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. Once the capability roadmap is approved by the management board, it shall be annexed to the technical and operational strategy.*



## CHAPTER II

### Functioning of the European Border and Coast Guard

#### *SECTION 1*

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

##### *Article 10*

Tasks of the European *Border and Coast Guard Agency* ~~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;

***(4 a) monitor the compliance with fundamental rights in all of its activities at the external borders and in return operations;***

- (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 established by this Regulation 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, *with the support of an internal quality control mechanism*, 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, and;~~

(14) - establish a procedure for referring and providing initial information to persons who are in need of, or wish to apply for, international protection, **including a procedure for the identification of vulnerable groups**, in cooperation with the **European Asylum Support Office** and competent national authorities;

(15) provide assistance in all stages of the return process **without entering into the merits of return decisions which remain the sole responsibility of the Member States** and assist with the coordination and organisation of return operations, ~~as well as~~ **and provide technical and operational support to implement the obligation to return returnees, as well as technical and operational support to return operations and interventions, also in circumstances requiring increased assistance**;

~~(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]~~ **the European Asylum Support Office within their respective mandates**, 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;

***(20a) within its respective mandate, cooperate with the European Union Agency for Fundamental Rights, in order to ensure the continuous and uniform application of the Union acquis on fundamental rights;***

(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, ***including the saving of lives*** 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 ***through*** the establishment of common training standards ***and programmes, including on fundamental rights.***

(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 ***its own*** pilot projects ~~regarding matters covered by~~ ***where necessary for the implementation of activities, provided for in*** this Regulation;

***(26b) develop technical standards for information exchange.***

(27) support the development of technical standards of equipment in the area of border control and return including for interconnection of systems and networks ***and of common minimum standards for external border surveillance as appropriate in accordance with the responsibility of the Member States and the Commission;***

(28) establish and maintain the communication network referred to in Article 14;

(29) develop and operate, in accordance with ~~[Regulation **EU 2017/1725**(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;

***30 a. Follow high standards for border management, allowing for transparency and public scrutiny and in full respect of the applicable legal framework ensuring respect, protection and promotion of fundamental rights;***

31. manage and operate the False and Authentic Documents Online system referred to in Article 80 ***and to support the Member States by providing support for facilitating detection of document fraud;***

32. fulfil the tasks and obligations entrusted to the Agency referred to in ***Regulation (EU) 2018/1240 of the European Parliament and of the Council***<sup>26</sup> [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 ***that Regulation*** ~~[Regulation establishing a European Travel Information and Authorisation System (ETIAS)]~~.

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***26 Regulation (EU) 2018/1240 of the European Parliament and of the Council of 12 September 2018 establishing a European Travel Information and Authorisation System (ETIAS) and amending Regulations (EU) No 1077/2011, (EU) No 515/2014, (EU) 2016/399, (EU) 2016/1624 and (EU) 2017/2226 (OJ L 236, 19.9.2018, p. 1).***

**32 b. assist Member States in the facilitation of the crossing of the external borders.**

(2) The Agency shall communicate ~~on its own initiative~~ on matters falling within its mandate. It shall provide the public with accurate, **detailed, timely** 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 **of the Member States** ~~which are~~ responsible for border management ~~and return~~, including coast guards to the extent that they carry out border control tasks, **as well as the authorities of the Member States responsible for return**, 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.~~

*Where the information is relevant for the performance of its tasks,* the Agency shall exchange information *with other relevant Union Agencies,* 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 the purposes of exchange of information as referred to in paragraphs 1 and 2 the necessary tools and structures shall be developed between the 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*

1. Member States shall appoint a national contact point for communication with the Agency on all matters pertaining to the activities of the Agency, ***without prejudice to the role of the National Coordination Centres as defined in Article 21.*** 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.
2. ***Member States may designate up to two staff members of representing their national contact point to be deployed to the Agency as liaison officers. The liaison officers may facilitate communication between the national contact point and the Agency, including, if necessary, the attendance of relevant meetings.***
3. ***The Agency shall provide the necessary premises within the building of the Agency and adequate support for the liaison officers to perform their duties. All other costs that arise in connection with the deployment of liaison officers shall be covered by the Member State. The Management Board shall specify the rules and conditions of the deployment, as well as the adequate support.***

## 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.

***Any system or application using the Communication Network***

***shall comply with all Union data protection law throughout its life cycle.***



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 CONFIDENTIAL 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 European Parliament***, the Commission and the Member States and, where appropriate, ***the international organisations, the Union institutions, bodies, offices and agencies referred to in Article 69*** ~~third parties and third countries as referred to in Article 69 and 71~~ ***72***.

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>27</sup>, Commission Decision 2015/443<sup>28</sup> and ~~[Regulation EU 2018/1725(EG) 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 ***operate and maintain an integrated return management platform in accordance with Article 50(1)*** ~~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 ***in cooperation with the Member States***:

- (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 ***responsible*** national authorities ***of the Member States*** and with the teams deployed by the Agency by using various means of communication such as satellite communications and radio networks;

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<sup>27</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>28</sup> Commission Decision (EU, Euratom) 2015/443 of 13 March 2015 on Security in the Commission (OJ L 72, 17.3.2015, p. 41).

(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.

#### *Article 17*

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

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

- (a) have proper ***and continuous*** access to the relevant systems and networks ***from, or connected to, the Agency***;
- (b) ~~implement~~ ***comply with the relevant*** 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 2015/4434/EU.

### ***SECTION 3***

### ***EUROSUR***

#### *Article 18*

#### ***EUROSUR***

This Regulation establishes EUROSUR as an integrated framework for the exchange of information and for ***operational*** cooperation within the European Border and Coast Guard in order to improve situational awareness and to increase the reaction capability for ***the purpose of*** border management ~~Union for the purpose of detecting, preventing,~~ ***including the detection, prevention*** and combating ***of*** 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.

## *Article 20*

### ***EUROSUR components***

1. For the exchange of information and for the cooperation in the field of border control, ***and taking into account existing information exchange and cooperation mechanisms***, 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~~ the coordination, ~~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, *if designated*, ~~when acting~~, *through appropriate structures established at national level*, with a view to contributing to the European Situational Picture and supporting border control operations;
  - (j) *under the supervision of the competent national authorities, contribute to the information assurance* ~~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*

~~1.4.~~ 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).

2.5. 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.

6. 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.

7. *The national coordination centre shall operate twenty-four hours a day and seven days a week.*

#### *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 **and continuously** 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 **national coordination centres and the relevant command and control structures used for the Agency's operations** ~~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 **information** layers:

- (a) an events layer including ~~all~~ events **and incidents** related to unauthorised border crossings, **and** cross-border crime, ~~and the detection of~~ **and when available information on** unauthorised secondary movements **for the purpose of understanding trends, volumes and routes**;

(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 ‘**very high**’, 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 **national security, including** military assets on a need-to-know basis.

5. The national coordination centres of neighbouring Member States ~~shall~~**may** 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~~**76**;

(c) Union delegations and missions and operations of the Common Security and Defence Policy ***as provided for in Article 69(1)(k)***;

(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~~ ***specific situational pictures as provided for in Article 28***
  - (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 Ff~~ 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~~ ***the international organisations, Union institutions, bodies, offices and agencies*** 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. ***The principle of originators' consent shall apply.***

#### *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 ***and aircraft*** which are suspected of, or have been identified as, being used for illegal immigration or cross-border crime, ***including in the case of persons in distress at sea with a view to transmitting this information to the relevant competent authorities for search and rescue operations;***

(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, ***including in the case of persons in distress at sea with a view to transmitting this information to the relevant competent authorities for search and rescue operations;***

***(ca) monitoring of designated areas of air borders in order to detect, identify and track aircraft and other forms of equipment 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 *trends, volume and routes* 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 *or with Regulation (EU) 2016/679 as applicable*, for preventing illegal immigration or cross-border crime;
  - (h) analysis of *information derived from* 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 **the Union** and, **in terms of migratory trends, volume and routes** within the Union, **as well as** 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 **established and** updated, **if needed**, 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 Article 91, and tailored risk analyses for operational activities. Every two years, the Agency, **in close consultation with the Member States**, 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. **In the results of such risk analyses, personal data shall be anonymised.**
  3. The risk analyses referred to in paragraph 2 prepared by the Agency, **on the basis of information received also from the Member States**, shall cover all aspects relevant to European Integrated Border Management with a view to developing a pre-warning mechanism.
- 3a. The Agency shall publish comprehensive information about the common integrated risk analysis model.**



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~~ **European Integrated Border Management and in accordance with Article 98(2)(e)** 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 **and shared with the competent authorities of the Member States in a timely and accurate manner.**

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~~ **notified to** the Agency **in a timely manner** to ensure a continuity of risk analysis by the Agency.

*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 *and prepare a report for this purpose as referred to in paragraph 6;*

(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;

***(e b) cooperate with the fundamental rights officer, where necessary, with a view to contributing to the promotion of respect for fundamental rights in the work of the Agency in line with subparagraph (e);***

(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 ***and directly*** 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 **reporting by the** liaison officer's ~~reports~~ referred to in point (h) of paragraph 3 raises 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~~ **the national contact point referred to Article 13** ~~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 ***prepared in close cooperation with the Member States and the Commission***, 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 ~~9 67~~ (4) as regards ~~their feasibility and implementation~~ ***the capacity to perform border control activities taking into account that some national capabilities may be partially used for other goals than border control.*** 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. ***In any event, each Member State shall be subject to monitoring and assessment at least once every three years.***

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 ***present and*** 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; ***and to assess the capacity of Member States to host European support in line with Article 9 67(3).*** That assessment is without prejudice to the Schengen evaluation mechanism.

5. In the vulnerability assessment, the Agency shall ~~take into account~~ **assess the** Member States' capacity, **in qualitative and quantitative terms**, 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 **preliminary** 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 ~~measures~~ should be aimed at eliminating the vulnerabilities identified in the assessment in order for Member States to increase their readiness to face **present and** upcoming challenges **at the external borders** by enhancing or improving their capabilities, technical equipment, systems, resources and contingency plans. **The executive director may offer the technical expertise of the Agency to the Member States to support the implementation of the measures concerned.**

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~~ ***In consultation with the member of the Management Board from the Member State concerned, the Executive Director shall*** 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, ***including a detailed description of the outcome of the vulnerability assessment, the measures taken by the Member States and the status of the implementation of any previous recommendations***, 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.

***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.
  - 2a. For the purpose of the Schengen evaluation mechanism in relation to external border management, the Commission shall share the results of the vulnerability assessments to all the members of the Schengen evaluation teams involved in the evaluation of the Member State concerned. Such information shall be considered sensitive in the sense of Regulation 1053/2013 and be treated accordingly.***
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.



***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 ~~irregular~~ illegal migration 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 ~~irregular~~ illegal migration 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;

***1a. ~~(d)~~ In order to swiftly address at a given border section a crisis situations, 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, based on the Agency's risk analysis and in agreement with the Member State concerned, the Agency shall attribute temporarily a “critical” impact level to that border section.***

***2. The attribution of ~~the~~ impact levels shall be based on the common integrated risk analysis model referred to in Article 30(1). If there is no agreement between the Member State concerned and the Agency on the attribution, the impact level attributed to that border section shall remain unchanged***

2. The national coordination centre shall constantly assess *in close cooperation with other competent national authorities* 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~~ *available for that* border ~~section 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)1a.~~ where a critical impact level is attributed to an external border section, the Agency shall notify it to the Commission. ***Taking into account the ongoing support by the Agency, the executive director*** ~~The Member State concerned and the Agency~~ shall, in addition to the measures taken under point (c), ~~implement the~~ ***issue a*** recommendation issued by the executive director of the Agency in accordance with Article 42(1). ***Member State concerned shall respond to the recommendation in accordance with article 42(2).***

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 ***(c) and paragraph 1a.***

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 ***third*** 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, ***and also request the profiles needed including those requiring executive powers if applicable***, 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~~ **focusing on** the fight against migrant smuggling or trafficking in human beings, and migration management, ~~including~~ **focusing on** 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 **and profiles** needed **including those executive powers if applicable to be authorised in accordance with Article 83(1a)**, taking into account the host Member State's available resources **and the host Member State's request referred to in Article 38**. 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 **close and timely** 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 **required in order to achieve its objectives**;
- (c) the geographical area where the joint operation will take place;

- (d) a description of the tasks, *including those requiring executive powers*, responsibilities, including with regard to the respect for fundamental rights *and data protection requirements*, 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~~ *applicable law* 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;<sup>29</sup>
- (k) the terms of cooperation with third countries, other Union bodies, offices and agencies or international organisations;

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<sup>29</sup> ~~\_\_\_\_\_~~ New recital (53c) added.

(l) *general instructions on how to ensure the safeguarding of fundamental rights during the Agency's operational activity and* 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 *an operational activity of the Agency* ~~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 *an operational activity of the Agency* ~~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.

5. *The provisions set out in this article shall apply mutatis mutandis to all operations of the Agency.*



***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, ***and the profiles needed including those requiring executive powers if applicable***. 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.

***3a. The executive director 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 and operational staff seconded from the Member States, present in other operational areas. The executive director shall also assess the additional needs to deploy operational staff in accordance with Article 58 and, once these resources within the required profiles are exhausted, to activate the Reserve for Rapid Reaction in accordance with Article 58a.***

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.~~

***4a At the same time, the Executive Director shall inform the Member States about the possibility of requesting additional operational staff in accordance with Article 58 and, if applicable, Article 58a by indicating possible numbers of operational staff and profiles to be provided by each Member State***

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 ***and agree upon*** 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.

**8 a. If a situation arises where the resources described in paragraphs 5 and 8 of this Article are insufficient, the executive director may activate the Reserve for Rapid Reaction by requesting from each Member State the number and profiles of additional staff to be deployed as provided for in Article 58a.**

**8b. The information referred to paragraphs 8 and 8a shall be provided in writing to the national contact points and shall indicate the date on which the deployments from each category are to take place. A copy of the operational plan shall also be provided to the national contact points.**

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).~~ **and where relevant, Article 58a.**

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, **by no later than twelve working days after the date on which the operational plan is agreed**~~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~~ **Where a Member State faces disproportionate migratory challenges at particular hotspot areas of its external borders characterised by large inward mixed migratory flows that Member State concerned to provide may request technical and operational reinforcement by migration management support teams composed of experts from the relevant Union Agencies that shall operate in accordance with their mandates.** ~~at hotspot areas and controlled centres~~

**That Member State shall submit a request for reinforcement and an assessment of its needs to the Commission.** The Commission shall, based on the assessment of needs of that Member State ~~and other relevant Union agencies,~~ transmit the request to the Agency, to ~~[the European Union Agency for Asylum]~~ **European Asylum Support Office**, Europol or other relevant Union agencies, as appropriate. ~~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 **in accordance with their respective mandate** a Member State's request for reinforcement and the assessment of its needs **for the purpose of defining a comprehensive reinforcement package consisting of various activities coordinated by the relevant Union agencies** to be agreed upon by the Member State concerned. **This process shall take place under the coordination of the Commission.**

3. The Commission shall, in cooperation with the host Member State and the relevant Union agencies, **while taking into account their respective mandates,** establish the terms of cooperation **at the hotspot area** 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 ~~these~~ **the migration management** teams.

4. The technical and operational reinforcement provided *in accordance with Article 83, and* in full respect for fundamental rights, by *operational staff from the standing corps in the framework of* migration management support teams may include:

(a) *in full respect for fundamental rights, providing* 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) *the provision of* 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]~~ *the European Asylum Support Office*;

c) technical and operational assistance in the *field of* return *in accordance with article 49* ~~process, including *the* 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 *and/or fundamental rights*.

## 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 *or adjust* 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 ***referred to in paragraph 1*** within ~~five~~ ***six*** 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 Management Board and*** 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 Council, on the basis of a proposal from 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.*

*The Commission shall consult the Agency before making its proposal.*

~~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~~ **Council** 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 *including teams from the Reserve for Rapid Reaction*;

(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~~ **Council** 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~~ **draw up a** draft operational plan **and submit it** to the Member States concerned.

5. The executive director and the Member State concerned shall ~~draw up~~ **agree on** the operational plan within ~~two~~ **three** 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~~ **Council** 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~~ **twelve** working days from the ~~deployment~~ **establishment** of the **operational plan** ~~first teams deployed in the operational area~~.

7. The Agency **and the Member States** shall, without delay and in any case within 10 working days from establishment of the operational plan, ~~deploy~~ **send** the necessary technical equipment **with competent staff to the destination of deployment** for practical execution of the measures identified in the ~~Commission~~ **Council** 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~~ **Council** 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 *agreed upon with the executive director*.

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.

***The Commission shall monitor the implementation of the measures identified in the Council decision referred to in paragraph 1, and the actions taken for that purpose, by the Agency.*** If the Member State concerned does not comply with the ~~Commission~~ **Council** 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 ***or – in the case of cooperation with a third country in accordance with the status agreement – the third country concerned*** 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 **and shall pay particular attention to vulnerable persons**. 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~~ **based on any** grounds ~~of~~ **such as** sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation **in line with Article 21 of the Charter**.

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 **any operational activity by the Agency** ~~a joint operation or rapid border intervention~~.

**6. Members of the teams being statutory staff of the Agency are subject to disciplinary measures in accordance to the Staff Regulations and measures identified in the supervisory mechanism referred to in Article 56(3a)(a).**

#### 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. ***At least one fundamental rights monitor shall assist and advise the coordinating officer.*** 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 ***in cooperation with the fundamental rights monitors*** and report to the ***Executive Director of 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, ***in particular as regards to fundamental rights*** 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 *in the Member States and in third countries as referred to in Article 58 or in the Member States as referred to in Article 58a*:
  - (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 *or redeployment within that host Member State or to another host Member State. The same applies to the deployments to and redeployments within or to another third country*;
  - (b) costs related to vaccinations;
  - (c) costs related to special insurance needs;
  - (d) costs related to health care, *including costs related to psychological assistance*;
  - (e) daily subsistence allowances, including accommodation costs;
  - ~~(f) costs related to the Agency's technical equipment~~
2. ~~Following prior approval by the Commission, the~~ **The** management board shall establish **adopt** 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 decision of the management board shall be based on the proposal of the executive director. To ensure compliance with the applicable legal framework, the executive director shall make this proposal after receiving the positive opinion of the Commission.** The detailed rules shall be based to the extent possible on simplified cost options. Where relevant, the Management Board shall ~~aim at ensuring~~ **ensure the consistency** ~~coherency~~ with the rules applicable to reimbursement of mission expenses of the statutory staff members.

Article 47

Suspension or termination *or non launching* of activities

1. The executive director shall terminate *any* activity 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~~ *an operational activity by the Agency* may request that the executive director terminate that *operational activity*. ~~joint operation, or rapid border intervention or migration management support team deployment.~~ *The executive director shall inform the management board of such request.*

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 *or suspend or terminate, in whole or in part, any activity by the Agency* 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 *linked to the activity concerned*. ~~The executive director shall inform the management board of such a decision.~~

*4a. The executive director shall not launch any activity for which there would, from its beginning be serious reasons to suspend or terminate it if he or she considers that this activity could lead to violations of fundamental rights or international protection obligations that are of a serious nature.*

*4b. Decisions referred to in paragraph 4 and 4a shall be taken on duly justified grounds. When taking such decisions, the executive director shall, amongst others, take into account relevant information, such as the number and substance of complaints registered unless resolved by a national competent authority, serious incidents reports, reports from coordinating officers and other relevant international organisations, Union institutions, bodies, offices and agencies in the areas covered by this Regulation. The executive director shall inform and provide justification to the management board of such decisions.*

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~~ *all the Agency's operational activities*. 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 *and shall ensure that the Agency take them into account in future operations*.

## **SECTION 8**

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

#### *Article 49*

#### **Return**

**1. Without entering into the merits of return decisions which remain the sole responsibility of the Member States** ~~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~~ **and** for international law, including refugee *international* protection, **the respect for the principle of non-refoulement** and children's rights, **the Agency shall with regard to return, in particular:**

(a) provide technical and operational assistance to Member States in ~~the return of third country nationals, including the preparation of~~

**(i) in the collection of information necessary for issuing** return decisions, the identification of **the** third country nationals **subject to return procedures** and other pre-return, ~~and~~ return-related **and post-arrival and post-return** 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;

**(ii) in 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 or any other information that is not necessary for the purpose of the return;**

**(iii) in the organisation and coordination of return operations and providing support with voluntary return in cooperation with the Member States;**

*(iv) in assisted voluntary returns from the Member States, providing assistance to the returnee during the pre-return, return-related and post-arrival and post-return phases, taking into account the needs of vulnerable persons;*

(b) provide technical and operational assistance to Member States experiencing challenges with regard to *their* return systems, ~~or migratory pressure, including by deploying migration management teams;~~

(c) develop, *in consultation with the fundamental rights officer*, a *non-binding* reference model for a *national IT* return case management system ~~prescribing~~ *describing* the structure of ~~national return management~~ *such* systems, as well as provide technical and operational assistance to Member States in developing ~~national return management~~ *such* systems ~~aligned~~ *compatible* with the model;

d) ~~develop and operate~~ *and further develop an integrated return management platform* ~~central system~~ and a communication infrastructure ~~between~~ *that enables the linking of the* national return management systems of the Member States ~~and~~ *with the platform* ~~central system~~, *for exchange of data and information, including the automated transmission of statistical data*, 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, *including the costs incurred for the necessary adaptation of the national return management systems for the purpose of ensuring secure communication to the platform*, 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, **including its** 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, **in particular the including EASO European Asylum Support Office**;

(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 **the implementation of** measures **taken by Member States in compliance with Directive 2008/115/EC and international law**, necessary to ensure the availability of returnees for return purposes and to prevent returnees from absconding **and on alternatives to detention**, ~~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.~~

***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].~~

~~1. In particular, the Agency shall set up, operate and further develop an integrated return management platform and maintain a central system, in accordance with Article 49(1)(d), for processing all information, including personal 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.<sup>30</sup> The personal data may only include:~~

~~*biographic data or passenger lists if the transmission of such data is necessary for the purposes of the Agency assisting in the coordination or organisation of return operations to third countries, irrespective of the means of transport. Such data shall be transmitted to the platform only when a decision to launch a return operation has been taken, and shall be erased as soon as the operation is terminated.*~~

~~*Biographic data shall only be communicated to the platform where it cannot be accessed by members of teams in accordance with Article 17 of Regulation (EU) 2018/1860 on the use of the Schengen Information System for the return of illegally staying third-country nationals.*~~

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<sup>30</sup> ~~New recital added as 10a.~~

*The platform may also be used by the Agency for the purpose of secure transmission of biographic or biometric data including all types of documents which can be considered as proof or prima facie evidence of the nationality of third country nationals subject to return decisions, if the transmission of such personal data is necessary for the purpose of the Agency to provide assistance in confirming the identity and nationality of third-country nationals in individual cases and at the request of Member State. Such data shall not be stored on the platform and shall be deleted immediately following a confirmation of receipt.*

2. *The Agency shall also develop, deploy and operate information systems and software applications allowing for the exchange of 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.*

3. *Personal data shall be processed in accordance with Articles 87, 88 and 89, as applicable.<sup>34</sup>*

#### *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 *or through other means of transport*. The Agency may, on its own initiative *with the agreement of the Member State concerned* coordinate or organise return operations.

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<sup>34</sup> ~~Proposed deletion due to the fact that data retention and deletion is clearly regulated in the General Data Protection Regulation applicable to the EU institutions and agencies.~~

2. Member States shall ~~on a monthly basis~~ ***through the platform referred to in Article 50(1)***, 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 ***with the agreement of the Member State concerned*** 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. ***The Agency shall receive confirmation from the Member State concerned that all returnees covered by a return operation organised or coordinated by the Agency have received a return decision which is enforceable.***

***Where teams referred to in Article 2(18) are deployed they shall, prior to the return of any returnee, consult the SIS in order to check whether the return decision has been suspended or the enforcement of the return decision has been postponed.***

***The rolling operational plan shall contain elements necessary for carrying out a return operation, including those concerning to the respect of fundamental rights, with reference to relevant codes of conduct, as well as references to inter alia procedures for monitoring, reporting and the complaints mechanism.***

3. The Agency may provide technical and operational assistance and *may also*, either at the request of the participating Member States or on its own initiative *with the agreement of the Member State concerned*, 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 *and the dignity of the returnee* 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.

5. Every return operation *organised or coordinated by the Agency* 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 handover 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.

*Art. 114 a*

*Administrative inquiries*

~~*The activities of the European Border and Coast Guard Agency shall be subject to the inquiries of the European Ombudsman in accordance with Article 228 TFEU.*~~

5a. If the Agency has concerns regarding the respect of fundamental rights during *any stage of* 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~~ *and shall* transmit every six months a detailed evaluation report covering all return operations conducted in the previous semester to *the European Parliament, to the Council, to the Commission and 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~~ *taking due account of the opinion of the* fundamental rights officer, constitute a pool of forced-return monitors from competent bodies from the Member States 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, *without prejudice to the independence, if such is the case, of these monitors under national law. The Agency shall also contribute to the pool with its fundamental rights monitors as referred to in Article 107a.* 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. *In accordance with Article 94 staff of the Agency deployed as forced return monitor are subject to the disciplinary measures provided for in the staff regulations.*

## Article 53

### **Return teams**

1. The Agency may deploy return teams, **that also consist of officers with specific expertise in child protection where necessary**, either at the request of a Member State or on its own initiative **with the agreement of the Member State concerned**, 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 **returnees** ~~third-country nationals who are the subject of return decisions issued by a Member State~~, the Agency shall, either on its own initiative **with the agreement of the Member State concerned** 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.

***The provisions of Article 51 shall apply also to return operations organised or coordinated by the Agency in the framework of return interventions.***

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~~ *returnees*, the Agency shall, either on its own initiative *with the agreement of the Member State concerned* 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 ***having the capacity as defined in Annex I*** ~~of 10 000 operational staff~~ shall be part of the Agency. This standing corps shall be composed of the following ~~three~~ ***four*** categories of staff in accordance with the annual availability scheme set in Annex I:

(a) Category 1: operational staff members of the Agency ~~recruited~~ ***employed*** in accordance with Article 94 (1) and deployed ***as team members*** in operational areas in accordance with Article 56, ***as well as staff responsible for the functioning of the ETIAS Central Unit;***

(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 ***ready to be*** provided to the Agency for a short term deployment as part of the standing corps in accordance with Article 58.

***(c a) Category 4: the Reserve for Rapid Reaction consisting of operational staff from the Member States ready to be deployed for the purpose of rapid border interventions in accordance with Articles 40 and 58a.***

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. ***In accordance with Article 83, such activities can only be carried out with the authorisation of the Member State or the third country concerned. The actual size of the deployments of the standing corps shall depend on the operational needs.***

*The deployments of the standing corps shall be complementary to the efforts undertaken by the Member States.*

3. *When providing support to the Member States* in accordance with Article 83, all the members of the European Border and Coast Guard standing corps ***deployed as team members*** shall ~~be enabled~~ ***have the ability*** 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~~ ***Article 56(5)***.

*The members of standing corps, including the statutory staff, shall meet the requirements for specialised training and professionalism as provided for in Article 16(1) of Regulation (EU) 2016/399 or other relevant instruments.*

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) definition of profiles and requirements for operational staff within the European Border and Coast Guard standing corps;***

***(a) based on the expected operational needs for the following year***, on the numbers per specific profiles of operational staff under ~~each of the three~~ categories ***1 to 3*** within the European Border and Coast Guard standing corps to form teams in the following year;

***(b) on the definition of capacities established in Annex III and Annex IV by setting 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 ***within the European Border and Coast Guard standing corps*** in the following year;

*(ba) on the definition of capacities established in Annex Va by setting the specific numbers and profiles of operational staff per Member State under the Reserve for Rapid Reaction to be provided in case of rapid border interventions in accordance with Articles 40 and 58a within the European Border and Coast Guard standing corps 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.

*4a. The crew for technical equipment provided in accordance to article 64 shall be taken into account as part of the contributions for short term deployments provided by the Member States pursuant to Article 58 for the following year. With a view to preparing the relevant management board decision referred to in paragraph 4, the Member State concerned shall inform the Agency about the intention to deploy the technical equipment with the corresponding crew by the end of January of each year.*

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 *sufficient staff, which may amount* up to 4% of the total number of the European Border and Coast Guard standing corps *as defined in Annex I, taken from Category I*, as staff having supportive *or monitoring* functions for the establishment of the standing Corps, planning and management of its operations and for the acquisition of the Agency's own equipment.

*7. The staff referred to in paragraph 6, as well as the staff responsible for the functioning of the ETIAS Central Unit, shall not be deployed as members of the team, but shall nevertheless be counted within Annex I.*

***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 ***in accordance with Article 83***, including the task to operate the Agency's own equipment.

***1.a When recruiting, the Agency shall ensure the selection of candidates demonstrating high level of professionalism, adhering to high ethical values and having appropriate language skills.***

2. In accordance with Article 62(2), following their recruitment, the ~~new~~ staff members, ***to be deployed as team members***, shall undergo ~~full~~ ***necessary*** border-guard or return-related training, ***including on fundamental rights***, as relevant ***according to the profiles established by the Management Board in accordance with Article 55(4), taking into account the previously acquired qualifications and professional experience in the relevant areas.***

***This training process shall be carried out*** in the framework of dedicated training programmes designed by the Agency, and, based on agreements with selected Member States, implemented in their specialised ~~academies~~ ***institutions for training and education, including the Agency's partnership academies in Member States. Adequate training maps shall be designed for each staff member after their recruitment ensuring their constant professional qualification to fulfil border guard or return-related tasks, the training maps shall be regularly updated.*** The cost of training shall be entirely covered by the Agency.

***Staff members who act as technical crew operating the Agency's own equipment do not need to undergo full border guard or return-related trainings.***

3. Throughout their employment, the Agency shall ensure that its statutory staff members discharge their duties as team members ~~with high standards~~ **according to the highest standards and in full compliance with fundamental rights**. Adequate training maps shall be designed for each staff member ensuring their constant professional qualification to fulfil border guard or return-related tasks.

**3a) The management board on a proposal of the executive director, shall:**

**a) establish an appropriate supervisory mechanism to monitor the application of the provisions on use of force by the statutory staff of the Agency, including rules on reporting and specific measures including of disciplinary nature with regard to the use of force during the deployments;**

**b) establish rules for the executive director to entitle the statutory staff members to carry and use weapons in accordance with Article 83 (5), including on the mandatory cooperation with the competent national authorities in particular of the Member State of nationality, the Member State of residence, and the Member State of the initial training. These rules shall also address how these competences should be maintained by the statutory staff, in particular as regards handling weapons including regularly performed shooting tests;**

**c) establish specific rules to facilitate the storage of weapons, ammunition and other equipment in secured facilities and their transportation to the operational area.**

***In relation to the rules referred to in letter a, the Commission should give an opinion on the compliance with the Staff Regulations, in accordance with Article 110 of the Staff Regulations. Fundamental rights officer shall be consulted on the proposal of the executive director in relation to point a.***

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, **monitoring of fundamental rights** and other related tasks. They shall not form part of the teams.

5. *The Agency statutory staff to be deployed as members of the teams in accordance with Article 83 shall have the ability to perform the following tasks requiring executive powers subject to the profiles established by the Agency and the relevant trainings:*
- a. *verification of the identity and nationality of persons, including consultation of relevant EU and national databases;*
  - b. *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 are fulfilled);*
  - c. *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;*
  - d. *stamping of travel documents in accordance with Article 11 of the Schengen Border Code;*
  - e. *issuing or refusing of visas at the border in accordance with Article 35 of the Visa Code and introduce the relevant data in VIS;*
  - f. *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;*
  - g. *register fingerprints of persons apprehended in connection with the illegal crossing of an external border in EURODAC (category 2) in accordance with Chapter III of the EURODAC Regulation;*
  - h. *liaising with third countries in view of identification of and obtaining travel documents for third country nationals subject to return;*
  - i. *escorting third country nationals subject to forced return procedures.*

***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 ***24 months*** ~~determined in accordance with Article 93(7)~~. ***With the agreement of the home Member State and the Agency, the individual secondment may be prolonged once for another 12 or 24 months.*** 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. ***The payment of the costs incurred by staff deployed under this Article shall be made in accordance with Article 94(7).***
3. The operational staff seconded to the Agency shall have the ~~same~~ tasks and powers of the members of the teams ***in accordance with Article 83***. 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. ***The Agency shall ensure the continuous training of the operational staff during their secondment.***
4. By 30 June each year, each Member State shall ~~nominate~~ ***indicate the candidates*** for secondment ***among*** 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~~ ***shall*** 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~~ ***refuse them*** in case of incompliance with the required profiles, insufficient language skills, misconduct or infringement of the applicable rules during previous deployments ***and request that a Member State propose another candidate for secondment.***



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 ***preliminary*** list of ***available*** operational staff for short-term deployments (Category 3) in accordance with the ~~contributions~~ ***capacities*** 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 ***preliminary*** national lists of nominated operational staff shall be communicated to the Agency. ***The final composition of the annual list shall be confirmed to the Agency after the conclusion of the annual bilateral negotiations by 1 December of that year.*** ~~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. ***However, Member States may decide to deploy an individual staff member beyond 4 months. Such extension shall be counted as a separate contribution of this Member State for the same profile or another required profile if the staff member poses the necessary competences. The payment of the costs incurred by staff deployed under this Article shall be made in accordance with Article 46(2).***

***2a. The operational staff deployed under this Article shall have the tasks and powers of the members of the teams in accordance with Article 83.***

3. The Agency may verify, whether **the** 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~~ **shall refuse nominated** operational staff ~~member from the national list in case of non-compliance with the required profiles, insufficient linguistic skills, misconduct or infringement of the applicable rules during previous deployments.~~ **The Agency shall also refuse nominated operational staff in case of non-compliance with the required profiles unless the respective operational staff qualifies for another profile allocated to that Member State. In case of refusal, the Member State concerned shall ensure a replacement with another operational staff member having the required profile.**

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 **within the required numbers and profiles**. The periods of individual deployment shall be decided in the annual bilateral negotiations and agreements between the Agency and Member States.

**4a.** However, as a final result **of the annual bilateral negotiations**, Member States shall make the operational staff **from the national lists referred to in paragraph 1** available for **specific** deployments 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 **rapid border intervention or a** new joint operation not specified in the respective annual work programme, ~~and nor~~ the corresponding result of annual bilateral negotiations, the **deployment shall be carried out within the capacities set out in Annex IV**. 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 **without prejudice to Article 40**.

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, ***that Member State shall contribute with operational staff in accordance with the requests of the Agency referred in paragraphs 4 or 6 of this Article.*** ~~its respective contribution shall be~~ ***However, these contributions shall not cumulatively exceed*** half of its ~~capacities contribution~~ ***established*** 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.

9. ***The technical crew taken into account for the contributions of Member States in accordance with Article 55 (4a), shall only be deployed, in accordance with the agreements following the annual bilateral negotiations for the corresponding items of technical equipment as referred to Article 64 (9).***

***By way of derogation to paragraph 1, Member States shall include in the annual list the technical crew referred in the previous paragraph only after conclusion of the annual bilateral negotiations. They may adjust the relevant annual list in case of any changes of the technical crew during the year concerned and notify these changes to the Agency.***

***The verification referred to in paragraph 3 shall not concern the competences to operate the technical equipment.***

***The crew members having exclusively technical duties shall only be indicated by functions on the national annual list.***

***The duration of deployment of technical crews shall be determined in accordance with Article 64.***

## *Article 58 a*

### *Member States' participation in the European Border and Coast Guard standing corps through the Reserve for Rapid Reaction*

- 1. The Member States shall contribute to the European Border and Coast Guard standing corps by means of a Reserve for Rapid Reaction (Category 4) to be activated for rapid border interventions in accordance with Articles 38 (2) and 40 provided that categories 1 to 3 staff have already been fully deployed for the rapid border intervention in question.*
- 2. Each Member State shall be responsible to ensure that the operational staff are available based on the specific numbers of profiles decided by the Management Board for the following year as referred to in Article 55(4), upon request of the Agency within the capacities set out in Annex Va and in accordance with the arrangements defined in this Article. Each operational staff member shall be available for a period of up to 4 months within a calendar year.*
- 3. The specific deployments in the framework of rapid border interventions from the Reserve for Rapid Reaction shall take place in accordance with Article 40 (8a) and (9).*

Article 59

*Mid-term Review of the ~~EUROPEAN BORDER AND COAST GUARD~~ European Border and Coast Guard standing corps*

1. By 31 ~~June~~ **December** 2023~~4~~, based in particular on the reports referred to in Article 65 **and Article 62(8a)**, the Commission shall ~~carry out~~ **present to the European Parliament and the Council** a ~~mid-term~~ review ~~on~~ **of the functioning overall number and composition** of the European Border and Coast Guard standing corps, **including the size of the individual Member State's contributions to the standing corps, assessing, as well as of its training, expertise and professionalism. The review shall also look into whether to maintain the Reserve for Rapid Reaction as part of the standing corps.** ~~overall number and composition~~

*The review shall describe and take into account existing and potential operational needs for the standing corps covering rapid reaction capacities, as well as significant circumstances affecting Member States national capabilities to contribute to the standing corps and the evolution of the statutory staff for the Agency's contributions.*

2. *By March 2024, the Commisison shall, where necessary, submit appropriate proposals to amend Annexes I, III, IV and Va. Where the Commission does not present a proposal, it shall explain the reason thereof.*

## Article 60

### *Antenna offices*

1. Subject to the agreement ~~of~~ **with** the host Member State **or the explicit inclusion of this possibility in the status agreement concluded with the host third country**, the Agency may set up antenna offices on ~~its~~ **the territory of that Member State or third country, in order** to facilitate and improve coordination of the operational activities, including in the field of returns, organised by the Agency in that Member State, in the neighboring region, **or in a third country** and to ensure the effective management of the human and technical resources of the Agency. The antenna offices shall be ~~temporary establishments~~ set up **in accordance with the operational needs** for the period of time necessary for the Agency to carry out significant operational activities in that specific Member State, ~~or~~ in the neighboring region, **or in a third country** concerned. That period of time may be prolonged, if necessary.

***Before an antenna is set up all the budgetary consequences shall be carefully assessed and calculated and the relevant amounts budgeted in advance***

2. The Agency and the host Member State **or the host third country** 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. ***The place of employment for the staff working in antenna offices shall be set in accordance with Article 94(2).***

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 **or the third country** 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) *or host third country* on all issues related to the practical implementation of the operational activities organised by the Agency in that Member State(s) *or third country*, 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, *as well as fundamental rights monitors assigned to monitor an operational activity*, in facilitating, if necessary, the coordination and communication between the Agency's Teams and the relevant authorities of the host Member State *or host third country as well any relevant tasks*;
- (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, *without prejudice to his or her tasks and functions as referred to in Article 32* 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.

**5a. The host Member State where the antenna office is set up shall provide the Agency with assistance to ensure operational capacity.**

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 ~~j~~40.

#### 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 and Coast** Guard standing corps in accordance with Annexes III and IV, in accordance with ~~Article~~ **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~~ **amount** to:

- (a) 100% of the reference amount multiplied by the number of ~~border guards or other officers~~ **operational staff** indicated ~~for the year n+2 annually~~ for secondment in accordance with Annex III;
- (b) ~~3730%~~ 30% of the reference amount multiplied by the number of ~~border guards or other officers~~ **operational staff** effectively deployed in accordance with Article 58 within the limit set by Annex IV **and Article 58a within the limit set by Annex Va**;



*(c) 50% of the reference amount multiplied by the number of operational staff recruited by the Agency as statutory staff. This one-off payment shall apply to staff departing from national services, being in an active service no longer than 15 years at the time of recruitment by the Agency.*

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 coefficient applicable in the Member State concerned.

3. The annual payment of the ~~amount~~ **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 or other officers~~ **operational staff** 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 **full in** relation to the number of ~~operational staff border guards or other officers~~ effectively deployed for ~~at least up to~~ **a consecutive or non-consecutive period of 4 months** in accordance with Article 58 within the limit set by Annex IV **and Article 58a within the limit set by Annex Va. For effective deployments referred to in paragraph 1(b), the payments shall be calculated on a pro rata basis based on the reference period of 4 months.**

*An advance payment linked to the annual payments of the amounts referred to in points (a) and (b) of paragraph 1 shall be granted following the submission of a specific and justified request by the contributing Member State.*

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). **These rules shall include modalities for advanced payments upon fulfilment of the conditions set out in paragraph 3, as well as the modalities for pro rata calculations including cases where the deployment of technical crew would exceptionally exceed the maximum national contributions as set out in Annex IV.**

**4a. When implementing the financial support under this Article, the Agency and the Member States shall ensure the compliance with the principles of co-financing and no double funding.**

## 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~~ **European Asylum Support Office**, and the European Union Agency for Fundamental Rights, **eu LISA and CEPOL**, develop specific training tools, including specific training in the protection of children and other persons in a vulnerable situation. **Training content shall take into account relevant research outcomes and best practices.** ~~The Agency~~ shall provide border guards, return specialists, **return escorts, forced-return monitors**, and other relevant staff who are members of the European Border and Coast Guard standing corps **as well as forced-return monitors and fundamental rights monitors** with ~~advanced-specialised~~ 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-specialised~~ 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 *to be deployed as team members* have received adequate training, *in addition to the training referred to in article 56(2) and (3)*, in relevant Union and international law, including on fundamental rights, access to international protection, *guidelines for the purpose of identifying persons seeking protection and directing them towards the appropriate procedures, guidelines for addressing the special needs of children, including unaccompanied minors, victims of trafficking in human being, persons in need of urgent medical assistance, and other particularly vulnerable persons* and, ~~where appropriate~~ *where it is intended that they participate in sea operations*, search and rescue, prior to their initial deployment in operational activities organised by the Agency. *This training shall also cover the use of force in line with Annex V*. For that purpose, the Agency shall, based on agreements with selected Member States, implement the necessary training programmes in their *specialised institutions for training and education*~~national academies~~, *including the Agency's partnership academies in Member States*. The cost of training shall be entirely covered by the Agency.

*2a. For that purpose described in paragraph 2, the Agency shall, based on agreements with selected Member States, implement the necessary training programmes in their specialised institutions for training and education, including the Agency's partnership academies in Member States. The Agency shall ensure that the training follows the common core curriculum, is harmonised and fosters mutual understanding and a common culture based on the values enshrined in the Treaties. The cost of training shall be entirely covered by the Agency.*

*The Agency may, after obtaining the approval of the management board, set up an Agency training centre to further facilitate the inclusion of a common European culture in the training provided.*

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, ***guidelines for the purpose of identifying persons seeking protection and directing them towards the appropriate procedures, guidelines for addressing the special needs of children, including unaccompanied minors, victims of trafficking in human being, persons in need of urgent medical assistance, and other particularly vulnerable persons*** and, ~~where appropriate~~ ***where it is intended that they participate in sea operations***, 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 ***and on referral of vulnerable persons***, 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.

***8a. The Agency shall establish and further develop an internal quality control mechanism to ensure the high level of training, expertise and professionalism of all its statutory staff in particular the operational staff who participate in the operational activities of the Agency. On the basis of the implementation of the quality control mechanism, the Agency shall prepare an annual evaluation report which shall be annexed to the annual activity report communicated to the European Parliament, to the Council and to the Commission.***

#### *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 *are to* 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 decision of the management board shall be based on the proposal of the executive director. To ensure compliance with the applicable legal, financial and policy frameworks, the executive director shall make this proposal after receiving the positive opinion of the Commission.***

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 ~~l~~ **k**.

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 aircrafts, helicopters, **service vehicles** 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 ***as being on government service*** in accordance with the applicable legislation of that Member State, ***including prerogatives and immunities for such technical equipment under international law;***

(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 ***and the financing of these assets.***

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 accordance with the model agreement referred to in paragraph 5 and planned on the basis of the annual bilateral negotiations referred to in Article 64(9).*** 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).

***When requesting a Member State to provide technical equipment and operational staff, the Agency shall take into account the particular operational challenges facing that Member State at the time of the request.***

#### *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 ~~63~~ (5).

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

5. To that end, ~~it~~ *the Agency, in close cooperation with the Member States and the Commission*, 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 89. For the equipment on the list of the items in this pool, Member States may not invoke the exceptional situation referred to in paragraph 89.

The equipment on this list *with competent staff* shall be sent *by the Member State concerned* 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>32</sup> or, where relevant, any other *future* dedicated Union funding made available to the Member States *with the clear objective* ~~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.

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<sup>32</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).

The Member States shall make that technical equipment co-financed under the Specific Actions of the Internal Security Fund or any other *future* dedicated Union funding available *as specified in the first subparagraph* 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~~ *up to 4* months *as planned in the annual bilateral negotiations*<sup>33</sup>. *Member State may decide to deploy the respective equipment beyond 4 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 89 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.

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.

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<sup>33</sup> ~~New recital (53b) added for clarification.~~

**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 **and Coast** Guard standing corps, **including through the reserve for rapid reaction** and the pool of forced return monitors;
  - (b) the number of operational staff committed to the European ~~and~~ Border **and Coast** 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 **and the Agency** 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.

**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 **border control 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)~~**(6)** 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.
5. ***The Agency shall make public information on its research projects, including demonstration projects, the cooperation partners involved and the project budget.***

## ***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 **EU 2018/1240** establishing a European Travel Information and Authorisation System (ETIAS)]~~.

## ***SECTION 11***

### ***COOPERATION***

#### ***~~SUB SECTION 1~~***

##### ***~~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 Support Office* ~~{the European Union Agency for 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, *in accordance with their mandates with a view to ensuring the following:*

*(i) promotion of European integrated border management standards,*

*(ii) situational awareness and risk analysis*

*The Agency may also cooperate with the following international organisations relevant to its tasks, within their respective legal frameworks:*

*(a) the United Nations through its relevant offices, agencies, organisations and other entities, in particular the Office of the United Nations High Commissioner for Refugees, the Office of the High Commissioner for Human Rights, the International Organization for Migration, the United Nations Office on Drugs and Crime and the International Civil Aviation Organization;*

*(b) the International Criminal Police Organization (INTERPOL);*

*(c) the Organisation for Security and Cooperation in Europe;*

*(d) the Council of Europe and the Commissioner for Human Rights of the Council of Europe.*

*(e) the Maritime Analysis and Operations Centre - Narcotics (MAOC-N);*

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 *and the Council* 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~~ **Any** transmission or other communication of personal data processed by the Agency to other Union institutions, bodies, offices and agencies **referred to in Article 88 (1) c) and d)** 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.~~

***Such arrangements shall include a provision ensuring that personal data transmitted to the Union bodies, offices and agencies by the Agency may be processed for another purpose only if authorised by the Agency and if compatible with the initial purpose for which the data were collected and transmitted by the Agency. The Union bodies, offices and agencies shall keep written records of a case-by-case compatibility assessment.***

Any transfer of personal data by the Agency **to the international organisations referred to in Article 88(1) c)** shall be **in accordance** with the data protection provisions laid down in Articles 87 to 90a.

***In particular, the Agency shall ensure that any working arrangement concluded with such international organisations regarding the exchange of personal data complies with Chapter V of Regulation (EU) 2018/1725 and is subject to the authorisation from the European Data Protection Supervisor, where provided for by that Regulation.***

***The Agency shall ensure that personal data transferred to international organisations is only processed for the purposes for which it was transferred.***

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. ***The agencies shall use information received in the context of their cooperation only within the limits of their legal framework and in compliance with fundamental rights, including data protection requirements.***

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 ***European*** 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 personal data***, 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.
4. ***The establishment of cooperation with third countries shall serve to promote European Integrated Border Management standards.***

#### *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~~ ***in the areas covered by the subject matter of this Regulation***. Such cooperation ~~and may include~~ exchange of information ~~and shall may~~ take place on the basis of bilateral or multilateral agreements, ~~or other forms of arrangements, 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~~**may** include provisions concerning information exchange and cooperation ~~in the framework~~ **for the purpose** of EUROSUR in accordance with Article 76 **and Article 90**.

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 **on a regular basis** 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~~**the Agency** 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, **the prohibition of arbitrary detention and the prohibition of torture, inhuman or degrading treatment or punishment**, with the support of, and in coordination with, Union delegations and, where relevant, CSDP missions and operations **in accordance with Article 69**.

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, ***drawn up on the basis of the model status agreement referred to in Article 77(1a)***, shall be concluded by the Union with the third country concerned ***on the basis of Article 218 TFEU***. 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, ***measures related to the establishment of an antenna office and practical measures related to the respect of fundamental rights***. The status agreement shall ensure the full respect of fundamental rights during these operations ***and provide for a complaints mechanism. The European Data Protection Supervisor shall be consulted on the provisions of the status agreement related to the transfers of data if the provisions differ substantially from the model Status agreement. Operations shall be carried out on the basis on an operational plan agreed also by the participating Member States. The participation of Member States in joint operations on the territory of third countries shall be on a voluntary basis.***

4. Where available, ~~it~~ ***the Agency*** shall also act within the framework of working arrangements concluded with those authorities in accordance with Union law and policy, in accordance with 77(~~56~~).

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).

***The Agency shall ensure that information transferred to third countries is only processed for the purposes for which it was transferred.*** 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. ***The Agency shall request prior authorisation from the European Data Protection Supervisor, as far as these working arrangements provide for the transfer of personal data and where provided for by Regulation 2018/1725.***

5. The Agency shall contribute to the implementation of ***the Union external policy on return and readmission within the framework*** ~~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. ***Such projects shall be included in the Single programming document referred to in Article 100.***
7. The Agency shall inform the European Parliament ***the Council and the Commission*** of activities conducted pursuant to this Article ***and, in particular, of the activities related to the technical and operational assistance in the field of border management and return in third countries, the exchange of sensitive non-classified information with third countries and the deployment of liaison officers and including detailed information on compliance with fundamental rights. The Agency shall make public the agreements, working arrangements, pilot projects and technical assistance projects with third countries, in full compliance with Article 110(2).***
8. ~~The Agency~~ shall include an assessment of the cooperation with third countries in its annual reports.



***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~~ ***such assistance*** to third countries in the context of the European integrated border management.
2. The Agency shall have the possibility of carrying out actions ***related to the european integrated border management*** ~~at the external borders~~ ***on the territory*** of a third country, subject to the agreement of that third country ~~including on the territory of that third country.~~
3. Operations ***on the territory of a third country*** shall be ***included in the annual work programme adopted by the Management Board in accordance with Article 100(1) and (7), and*** carried out on the basis of an operational plan agreed between the Agency and the third country concerned ***and in consultation with the participating Member States***. In case a ***Member State or Member States are neighbouring the third country or bordering the operational area of the third country***, ~~of operations~~ the operational plan ***as well as any amendments thereof*** shall have ~~the its or their~~ agreement of the Member State or Member States. ~~Operational plans may include provisions concerning information exchange and cooperation in the framework of EUROSUR in accordance with Article 76. Articles 39, 44, 47, 48, 55 to 58 shall apply mutatis mutandis to the deployment in the third countries.~~

***3a. The executive director shall ensure the security of the staff deployed in third countries.***

***For this purpose, Member State shall inform the executive director about any concern related to the security of its nationals if deployed on a territory of certain third countries.***

***When the security of any personnel deployed in third countries cannot be guaranteed, the executive director shall take appropriate measures by suspending or terminating the corresponding aspects of the technical and operational assistance provided by the Agency to that third Country.***

**3b. 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 operations on the territory of third countries shall be on voluntary basis.**

***In addition to the relevant mechanism referred to in Article 58(7) and paragraph 3a, where the security of its participating personnel cannot be guaranteed to the satisfaction of the Member State, the Member State can opt out of its respective contribution to the operation in the third country. If a Member State invokes such an exceptional situation, it shall provide comprehensive reasons and information on the situation to the Agency in writing during the annual bilateral negotiations or no later than 21 days prior to the deployment, the content of which shall be included in the report referred to in Article 65.<sup>34}</sup> The deployment of operational staff seconded in accordance with Article 57 shall be subject to the consent of the home Member State upon notification by the Agency and no later than 21 days prior to the deployment***

**3c. Operational plans referred to in paragraph 3 may include provisions concerning information exchange and cooperation for the purpose of EUROSUR in accordance with Articles 76(2) and 90.**

~~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.~~

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<sup>34</sup> ~~Provisions adjusted in accordance with the mechanism foreseen in Articles 55-58 in particular with regard to the discharge of national duty.~~

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

1. The national coordination centres of the Member States ***referred to in Article 21*** and, when relevant, the Agency shall be the contact points for the exchange of information and cooperation with third countries ~~in the framework~~ ***for the purpose*** of EUROSUR.

2. The provisions for the exchange of information ~~in the framework~~ ***for the purpose*** of EUROSUR referred to in Article ~~72-73~~ (2) shall ~~detail~~ ***address***:

(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.~~

**1a. The Commission, after consulting the Member States, the Agency, the agency for fundamental rights and the European data protection supervisor, shall draw up a model status agreement for actions conducted on the territory of third countries.**

~~2. The Commission, after consulting in cooperation with 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) in accordance with Article 71(2), and Article 73(2).~~

The Commission, after consulting the Agency, **and other relevant bodies or agencies, including the European Union Agency for Fundamental rights and the European Data Protection Supervisor**, shall draw up a model for the working arrangements referred to in Article 74. **Such model shall include provisions related to fundamental rights and data protection safeguards addressing practical measures**

~~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.<sup>35</sup>~~

~~43. Before a new bilateral or multilateral agreement referred to in Article 73 (1) is concluded, the Member State(s) concerned shall notify its **draft provisions related to border management and return** to the Commission, which shall verify whether its provisions comply with this Regulation and inform the Member State accordingly.~~

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<sup>35</sup> ~~Inserted in paragraph 5.~~

~~54.~~ 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. ***The Member States concerned shall notify the provisions of existing and new bilateral and multilateral agreements referred to in Article 73 (1) related to border management and return to the Commission, which shall inform the Council and the Agency thereof.***

~~65.~~ Before any working arrangements ~~with~~ ***between the Agency and third parties or competent authorities of*** third countries are ***approved*** ~~concluded by the Management Board~~, the Agency shall notify them to the Commission. ***The Agency shall inform the European Parliament before a working arrangement is concluded by providing detailed information to it as regards the parties of the working arrangement and its envisaged content*** ~~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.~~

~~76.~~ 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 well as other experts*** 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, ***with Member States in accordance with [Regulation (EC) No 377/2004]*** and, where relevant, CSDP missions and operations as set out in Article 69. ***They shall, wherever possible, have their offices in the same premises as the Union delegations.***

4. ***In third countries where return liaison officers are not deployed by the Agency, the Agency may support a Member State to deploy a return liaison officer to provide support to the Member States, as well as to the Agency's activities, in accordance with Article 49.***

***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 ***in accordance with Article 69*** 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 ***or the safety of third country nationals***. 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.

3. ***The Agency shall ensure that the presence of observers does not pose any risk related to the respect of fundamental rights.***

## CHAPTER III

### False and Authentic Documents Online (FADO)

#### *Article 80*

*The Agency shall take over and operate the False and Authentic Documents Online ('FADO') system established in accordance with Joint Action 98/700/JHA.*



# CHAPTER IV

## General provisions

### *SECTION 1*

#### *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; **and** relevant international law — including the 1951 Convention Relating to the Status of Refugees, the 1967 Protocol thereto, **the Convention on the Rights of the Child** and obligations related to access to international protection, in particular the principle of non-refoulement.

For that purpose, the Agency, **with the contribution of and subject to the endorsement by the fundamental rights officer**, shall draw up, further develop and implement a fundamental rights strategy **and action plan**, including an effective mechanism to monitor the respect for fundamental rights in all the activities of the Agency.

***The Consultative Forum shall be consulted on the fundamental rights strategy in accordance with art. 106 (3).***

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 *where there is, inter alia, a serious risk that he or she would be subjected to the death penalty, torture, persecution, or other inhuman or degrading treatment or punishment, or where his or her life or freedom would be threatened on account of his or her race, religion, nationality, sexual orientation, membership of a particular social group or political opinion*, in contravention of the principle of non-refoulement, or from which there is a risk of expulsion, *removal, extradition* 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 **and address within its mandate** 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 **all** 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 **which shall apply** ~~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 **operations**, 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~~ **Regulations (EU) No 656/2014 and (EU) 2016/399, as well as** Directive 2008/115/EC.

***1a. The performance of the tasks and the exercise of powers, in particular those requiring executive powers, shall be subject to the authorisation of the host Member State on its territory as well as to applicable Union, national or international law, in particular Regulation (EU) No 656/2014, as described in the operational plan referred to in Article 39.***

2. While performing their tasks and exercising their powers, members of the teams shall **fully ensure the respect of fundamental rights and shall** comply with Union, and international law **as well as** ~~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.

***3a. The host Member State may report to the Agency via the coordinating ~~on~~ officer incidents related to non-compliance with the operational plan, including in relation to fundamental rights, by a team member, for possible follow-up including disciplinary measures.***

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~~ *seconded* from Member States for a ***long duration or deployed for a short duration*** shall wear, ~~where appropriate,~~ their own uniform while performing their tasks and exercising their powers.

***By derogation from this rule, the management board decision referred to in article 55(4)(-a) shall indicate the profiles to which the obligation to wear a uniform may not apply due to the specific nature of the operational activity.***

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~~ *statutory staff* shall be established by a *decision of the Management Board, based on a proposal from the executive director after receiving the opinion of the* ~~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~~ *or deployed from a Member State* for a short ~~or long-~~ term duration, the *ability to* carrying and use of service weapons, ammunition and equipment shall be subject to the home Member State's national law.

The *ability to* carrying and use of service weapons, ammunition and equipment by the Agency's statutory ~~operational~~ *staff deployed as team members* shall be subject to the framework and detailed rules laid down *in this Article* and Annex V.

*For the purpose of implementing this paragraph, the executive director may entitle members of the statutory staff to carry and use weapons in accordance with the rules adopted by the Management Board, in line with Article 56(3a)(b).*

~~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~~**The performance of their tasks and exercising their powers, by members of the teams, including members of the statutory staff, during the deployment requiring shall be authorised to** the use of force, including **carrying and use of** service weapons, ammunition and equipment, with the consent of **shall be authorised for the relevant profiles by the home** host Member State **and be subject to the consent of either the home Member State or, for statutory staff, of the Agency. The use of force, including carrying and use of service weapons, ammunition and equipment shall be exercised in accordance with the national law of the host Member State and in the presence of border guards of the host 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 **on its territory** in the absence of border guards of the host Member State.

**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.**

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 **in line with relevant principles of international human rights law and the Charter of Fundamental Rights.**

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 ***through their national interfaces or another form of access provided in the legislative instruments establishing such databases, as applicable***. 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~~ ***strictly necessary*** 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 ***and decisions refusing visas at the border in accordance with Article 35 of the Visa Code Regulation (EC) 810/2009*** 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 *of the members of the team*

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 *of the team members seconded or deployed by the Member States*, 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 *statutory* 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. ***This is without prejudice to any action before the Court of Justice against the Agency in accordance with Article 96a.***

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, *or between a Member State and the Agency*, 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 of the members of the teams*

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, *including the Agency's statutory staff*, shall be treated *in the territory of the host Member State* 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 EBCG

#### Article 87

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

1. The Agency shall apply [~~Regulation (EC) No 45/2001~~] **(EU) 2018/1725** when processing personal data
2. The management board shall ~~take the necessary administrative measures to apply~~ [~~Regulation (EC) No 45/2001~~] **adopt internal rules on the application of Regulation (EU) 2018/1725** by the Agency, including ~~those~~ concerning the data protection officer of the Agency.

*The Agency may, in accordance with Article 25 of Regulation (EU) 2018/1725, adopt internal rules on restricting the application of the rights under Articles 14 to 22, 35 and 36 of Regulation (EU) No 2018/1725. In particular, the Agency shall, for the performance of the Agency's tasks in the area of return activities, provide for internal rules on restricting the application of those rights on a case by case basis as long as the exercise of such right would risk to jeopardise the return procedure. Such restrictions shall respect the essence of the fundamental rights and freedoms, be necessary and proportionate to the objectives pursued and shall contain specific provisions, where relevant, as referred in Article 25(2) of Regulation (EU) No 2018/1725.*

3. The Agency may transfer *the* personal data *referred to in Articles 50, 89 and 90* ~~an authority of~~ to a third country or to an international organisation in accordance with the provisions of *Chapter V of [Regulation (EU) No 2018/1725 (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)(e)] 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.~~ ***The Agency shall ensure that personal data transferred to a third country or to an international organisation is only processed for the purpose for which it was provided. The Agency shall indicate, at the moment of transferring personal data a third country or to an international organisation, any restrictions on access to it or use of it, in general or specific terms, including as regards transfer, erasure or destruction. Where the need for such restrictions becomes apparent after the transfer of personal data, the Agency shall inform the third country or the international organisation accordingly. They shall comply with such restrictions.***

4. ***Transfers of personal data to third countries shall not prejudice the rights of applicants for and beneficiaries of international protection, in particular as regards non-refoulement, and the prohibition on disclosing or obtaining information set out in Article 30 of Directive 2013/32/EU of the European Parliament and of the Council.***

5. ***Member States and the Agency, as appropriate, shall ensure that information transferred or disclosed to third countries pursuant to this Regulation is not transmitted onwards to other third countries or to any other third parties. Provisions in this regard shall be included in any agreement or arrangement concluded with a third country providing for the exchange of information.***

***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~~ ***as referred to in Articles 38 to 41;***
  - (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, ***the Commission, the EEAS and the following Union Agencies and international organisations: EASO the European Asylum Support Office, Europol or Eurojust, European Union Satellite Centre, EMSA, EFCA, European Aviation Safety Agency and the Network Manager for ATM network functions,*** in accordance with Article 89;
  - (d) facilitating the exchange of information with the Member States law enforcement authorities, Europol or Eurojust in accordance with Article 90a;***
  - ~~(e)~~ risk analysis by the Agency in accordance with Article 30;
  - ~~(f)~~ ~~(e)~~ identifying and tracking vessels ***performing its tasks*** in the framework of EUROSUR in accordance with Article 90;
  - (g) operating FADO in accordance with Article 80;***
  - ~~(h)~~ 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 **decide to** process such personal data for a different purpose which also falls under paragraph 1 ~~only if~~ **on a case by case basis and only after having assessed that processing for another purpose is compatible with the initial purpose for which the data were collected and** authorised by the provider of the personal data. **The Agency shall keep written records of a case-by-case compatibility assessment.**

3. **The Agency, the** 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~~ **recipients** accordingly. The ~~Agency~~ **recipients** shall comply with such restrictions.

#### *Article 89*

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

1. **Before each joint operation, return operation, pilot project, rapid border intervention or migration management support team, the Agency and the host Member State shall determine in a transparent manner the responsibilities for compliance with the data protection obligations. When the purpose and the means of processing is jointly determined by the Agency and the host Member State, they shall, , by means of an arrangement between them, be joint controllers.**

**The information on who is responsible for compliance with the data protection obligations vis -a vis the data subjects shall be indicated in the operational plan, rolling plan or an arrangement and shall be available to the data subjects. It shall indicate a contact point for the data subjects.**

~~1. For the purposes referred to in Article 88 (1) a) b) c) and e), f)~~ The Agency shall only process the following categories of personal data collected ~~and transmitted to it~~ by the Member States, **by the members of the teams**, by its staff or by ~~EASO the European Asylum Support Office, Europol or Eurojust~~ and **transmitted to it** in the context of joint operations, **return 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)~~ **(a)** 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;~~

**(b) personal data necessary to confirm the identity and nationality of third-country nationals for the framework of the return activities, including passenger lists;**

(c) license plate numbers, vehicle identification numbers, telephone numbers or ship **and aircraft** 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)** ~~(b)~~ where transmission to the authorities of the relevant Member States which are responsible for border control, migration, asylum, returns **or to relevant EU agencies** is necessary for fulfilling their tasks in accordance with Union and national legislation;

~~(b)~~(e) where transmission to the authorities of relevant Member States, *relevant EU agencies*, 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;

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

#### 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 **Regulation (EU) 2016/679 and, where applicable, Directive 2016/680**, ~~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 **or Article 3(8) of Directive 2016/680** and which shall have central responsibility for the processing of *personal* 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~~ **may be accessed** ~~processed~~ in the European situational and specific situational pictures **and the Eurosur Fusion Services**.

**2a. The processing of information in Eurosur may exceptionally require the processing of personal data other than ship and aircraft identification numbers. Any processing of such personal data in the framework of EUROSUR shall be strictly limited to what is necessary for the purposes of EUROSUR in accordance with Article 18.**

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 *chapter V of Regulation 2018/1725 by the Agency, and in accordance with chapter V of Regulation (EU) 2016/679, and with chapter V of Directive (EU) 2016/680 as applicable, including* ~~and~~ the relevant national provisions on data protection, *by the Member States.*

4. Any exchange of information under Articles 73(2), Article 74(3) and Article 75(3) which provides a third country with ~~information~~ *data* 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.

*4a. Member States and the Agency shall keep records of processing activities in accordance with Article 31 of Regulation (EU) 2018/1725, Article 30 of Regulation (EU) 2016/679, and Article 24 of Directive (EU) 2016/680, as applicable.*

~~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 90a*

*Processing of operational personal data*

*1. Where the Agency, in the performance of its task under Article 10(19), processes personal data which it collected while monitoring the migratory flows, carrying out risk analyses or during its operations for the purpose of identifying suspects of cross-border crime, the Agency shall process such personal data in accordance with Chapter IX of Regulation (EU) 2018/1725. Personal data processed for this purpose shall relate to natural persons, including license plate numbers, vehicle identification numbers, telephone numbers, ship or aircraft identification numbers which are linked to such persons, who are suspected, on reasonable grounds, by the competent authorities of the Member States, Europol or Eurojust, or the Agency of involvement in cross-border crime, as well as personal data in respect of victims or witnesses which supplement the operational personal data on suspects processed by the Agency in accordance with this Article.*

*2. The Agency shall exchange such personal data:*

- a) with Europol or Eurojust, where the transmission of such personal data is strictly necessary for the performance of their respective mandates and in accordance with Article 69;*
- b) with the competent law enforcement authorities of the Member States where it is strictly necessary to those authorities for the purposes of preventing, detecting, investigating or prosecuting serious cross border crime.*

*Article 90b*

*Data retention*

*1. The Agency shall delete personal data as soon as they have been transmitted to the competent authorities of Member States, other Union Agencies and in particular ~~EASO~~ the European Asylum Support Office, or transferred to third countries or international organisations 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.*

2. *The personal data processed for the purpose of performing return-related tasks shall be deleted as soon as the purpose for which they have been collected has been achieved and no later than 30 days after the end of the return-related tasks.*

3. *Operational personal data processed for the purpose of Article 90a shall be deleted as soon as the purpose for which they have been collected has been achieved by the Agency. The Agency shall continuously review the need for necessity of storage of such data, in particular the personal data of victims and witnesses. In any case the Agency shall review the need for necessity of storage of such data no later than 3 months after the start of initial processing of such data, and every 6 months thereafter. The Agency shall decide on the continuous storage of personal data, in particular the personal data of victims and witnesses, until the following review, only if such storage is still necessary for the performance of the Agency's tasks under Article 90a.*

4. *The above provisions shall not apply to personal data collected in the context of FADO.*

#### *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 ***the*** 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 ***to ensure compatibility with the Commission Decisions (EU, Euratom) 2015/443 and 2015/444.***

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 *comply with rules concerning the forwarding and handling of classified information which are applicable between the European Parliament and* ~~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>36</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.

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<sup>36</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).

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~~

~~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.~~

45. For the purpose of implementing 32 *and* Article 45 ~~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.

56. 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.

67. 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. ***These rules shall include in particular the financial arrangements related to these secondments, including insurance, and training.*** 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. Without prejudice to Articles 85 and 86, the Agency shall be liable for any activities it has undertaken in accordance with this Regulation.***

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, ***including those related to the use of executive powers.***

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 96 a*

##### *Actions before the Court of Justice of the European Union*

*1. Proceedings may be brought before the Court of Justice for the annulment of acts of the Agency intended to produce legal effects vis-à-vis third parties, in accordance with Article 263 TFEU, for failure to act, in accordance with Article 265 TFEU, for the non-contractual liability for damages caused by the Agency and, pursuant to an arbitration clause, the contractual liability for damages caused by acts of the Agency, in accordance with Article 340 TFEU.*

*2. The Agency shall take the necessary measures to comply with judgments of the Court of Justice of the European Union.*

#### *Article 97*

##### *Administrative and management structure of the Agency*

The administrative and management structure of the Agency shall **be** comprised of:

- (a) a management board;
- (b) an executive director;
- (c) deputy executive directors;
- ~~(d)(e)~~ a fundamental rights officer;
- ~~(e)(d)~~ consultative forum *as an advisory body*;

## 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, ***without prejudice to obligations established by this Regulation, in particular in Article 50, Article 87, Article 88, Article 89 and Article 90***;
  - (f) adopt decisions on the establishment of a common integrated risk analysis model in accordance with Article 30 (1);adopt decisions on the nature and terms of the deployment of liaison officers in Member States in accordance with Article 32 (2);
  - (g) adopt a technical and operational strategy for the European Integrated Border Management in accordance with Article 8 5(5);
  - (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~~ **consultation** 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 *and a deputy fundamental rights officer* in accordance with Article 107(4);
- (za) *establish special rules in order to guarantee the Fundamental Rights Officer independence in the performance of his or her duties.***
- (zb) *decide on any other matter where provided for in this Regulation.***
- (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~~ ***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 *or working arrangements with third countries as referred to in Article 74(4)* shall require a vote in favour of their adoption by the Member of the management board representing that *particular* Member State *or the Member State neighbouring that third country, respectively*.

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;~~ *and training*, 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.

***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 **and the Council**. If the Agency decides not to take into account elements of the opinion of the Commission, it shall provide a thorough justification. ***The obligation to provide a thorough justification shall also apply to the elements raised by the European Parliament and the Council during consultation.*** The management board shall forward the document to the European Parliament, to the Council and to the Commission ***without delay***.
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. ***In line with the multiannual strategy policy cycle,*** ~~t~~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 ***including indicative multiannual planning of the profiles for the standing corps.*** 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 ***strategic actions for the implementation of the fundamental rights strategy referred to in Article 81(1) and*** 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~~ ***the European Asylum Support Office*** 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~~ ***European Asylum Support Office*** and EUROPOL shall be invited to attend the meetings of the Management Board. ***A representative of the European Union Agency for Fundamental rights shall be invited to attend points relevant for the protection of fundamental rights on the agenda of Management Board meetings. The Chairperson of the management board may also invite an expert of the European Parliament to attend the meetings of the management board.*** The management board may also invite a representative of ***other*** 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 (3d), (9i), (k) and (13m) of Article 98(2), Article 100(1) and (8), 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 activities of the Agency***, 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 ***answer any question put forward by a Member of the European Parliament in writing within 15 calendar days. The executive director shall report to it regularly to the appropriate bodies and committees of the European Parliament.***

***2a. Except where specific deadlines are already provided for in this Regulation, the executive director shall ensure that reports are transmitted to the European Parliament, Council or Commission as soon as possible but at the latest within six months after the end of the reporting period unless a delay is duly justified in writing***

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 ~~Council~~**Commission** decision referred to in Article 43(1);
- (m) to withdraw financing of activities in accordance with Article 47;

*(ma) to assess prior to any activity whether there are violations of fundamental rights or international protection obligations that are of a serious nature or are likely to persist in accordance with Article 47(4a) and (4b);*

(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.

*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 executive director shall be involved in the selection process.*** 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 ~~it the executive director and the management board~~ with independent advice in fundamental rights matters. ***The executive director ~~or~~ and the management board in coordination with the fundamental rights officer may consult the consultative forum on any matter related to fundamental rights.***

2. The Agency shall invite ~~EASO [the European Union Agency for Asylum]~~ **the European Asylum Support Office**, 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~~ **fundamental rights officer after consulting 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 **functioning** ~~establishment~~ of the complaints mechanism, on codes of conduct and on common core curricula. **The Agency shall inform the consultative forum on the follow-up of its recommendations.**
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 **in a timely and effective manner**, including by carrying out on-the-spot visits to joint operations or rapid border interventions subject to the agreement of the host Member State **or the third country as applicable**, and to hotspot areas ~~or controlled centres~~, **and to return operations and return interventions, including in third countries. Where the host Member State does not agree with an on-the-spot visit of the consultative forum to a joint operation or rapid border intervention carried out in its territory it shall provide duly justified reasons in a letter to the Agency.**

***Fundamental rights officer***

1. A fundamental rights officer shall be appointed by the management board ***based on a list of three candidates, after consultation with the consultative forum***. 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 of fundamental rights. The fundamental rights officer shall have the necessary qualifications and, ***expert knowledge and professional*** experience in the field of fundamental rights.

***1a. The fundamental rights officer shall perform the following tasks:***

***(i) contributing to the Agency's fundamental rights strategy and the corresponding action plan, including by issuing recommendations for improving it;***

***(ii) monitoring the Agency's compliance with fundamental rights, including by conducting investigations into any of its activities;***

***(iii) promoting the Agency's respect of fundamental rights;***

***(iv) advising the Agency where he or she deems it necessary or where requested on any activity of the Agency without delaying those activities;***

***(v) providing opinions on the operational plans drawn up in accordance with Articles 39, 40, 41, 43, 51, 54 and 75 as well as on pilot projects and technical assistance projects in third countries;***

***(vi) providing opinions on working arrangements;***

***(vii) carrying out on-the-spot visits to any joint operation, rapid border intervention, pilot project, migration management support team, return operation or return intervention, including in third countries;***

***(viii) providing the secretariat of the consultative forum; The secretariat shall receive instructions directly from the co-chairs of the consultative forum;***



*(ix) inform the executive director about possible violations of fundamental rights during activities of the Agency;*

*(x) any other task where provided by this regulation*

*(xi) selection and management of the fundamental rights monitors.*

*In this regard the Fundamental Rights Officer shall, in particular:*

*- appoint the fundamental rights monitors,*

*- nominate fundamental rights monitors as provided for in Article 10756a(2a),*

*- nominate fundamental rights monitors as forced return monitors for the pool referred to in Article 52,*

*- ensure that the fundamental rights monitors are adequately trained,*

*- report to the executive director about possible violations of fundamental rights reported to him or her by the fundamental rights monitors when deemed necessary. The executive director shall reply to the Fundamental Rights Officer how concerns have been addressed.*

*The Fundamental Rights Officer may entrust any of the specific tasks referred to under paragraph 1a (i) to x) to one of the fundamental rights monitors.*

2. *Special rules applicable to the fundamental rights officer shall be laid down by the management board in order to guarantee that the fundamental rights officer is independent in the performance of his or her duties and thereby also his or her staff. He or she shall report directly to the management board and cooperate with the consultative forum. The management board shall ensure that action is taken with regard to recommendations of the fundamental rights officer. In addition, The the fundamental rights officer shall ~~se~~ publish an annual report on a regular basis and as such contribute to the mechanism for monitoring his or her activities and on the respect of fundamental rights in all activities of the Agency. Those reports shall include information on the complaints mechanism and the implementation of the fundamental rights strategy.*

*2a. The Agency shall ensure that the fundamental rights officer can act autonomously and be independent in the conduct of his or her duties. The fundamental rights officer shall have sufficient and adequate human and financial resources at his or her disposal, necessary for the fulfilment of his or her tasks.*

*Staff of the fundamental rights officer shall be selected by the fundamental rights officer and shall only report to him or her.*

*2b. The fundamental rights officer shall be assisted by a deputy fundamental rights officer. A deputy fundamental rights officer shall be appointed by the management board from a list of at least three candidates presented by the fundamental rights officer. The deputy fundamental rights officer shall have the necessary qualifications and experience in the field of fundamental rights and be independent in the conduct of his or her duties. If the fundamental rights officer is absent or indisposed, the deputy fundamental rights officer shall assume his or her duties and responsibilities.*

3. The fundamental rights officer shall have access to all information concerning respect for fundamental rights in all the activities of the Agency.

#### *Article 107a*

#### *Fundamental Rights Monitors*

*1a. Staff of the Agency shall act as fundamental rights monitors whose role shall be to constantly assess the fundamental rights compliance of operational activities, to provide advice and assistance in this regard and to contribute to the promotion of fundamental rights as part of the European integrated border management.*

*1. The fundamental rights monitors shall have the following tasks:*

*(a) monitor the fundamental rights compliance and provide advice and assistance on fundamental rights in the preparation, conduct and evaluation of operational activities of the Agency he or she have been assigned to monitor by the fundamental rights officer;*

*In this regard they shall, in particular:*

*(i) follow the preparation of operational plans and report to the Fundamental Rights Officer in order for him/her to fulfill his/her tasks as provided for in Article 107(1a)(v);*

*(ii) conduct visits where the operational activity takes place, including on a long-term basis;*

*(iii) cooperate and liaise with the coordinating officer as provided for in Article 45 and provide assistance and advice to him or her;*

*(iv) inform the coordinating officer and report to the Fundamental Rights Officer on any concerns related to possible violation of fundamental rights within the Agency's operational activities;*

*(v) contribute to the evaluation of activities as referred to in Article 48.*

*(b) act as forced return monitors;*

*(c) contribute to the training activities of the Agency on fundamental rights as provided for in Article 62, including by providing training on fundamental rights.*

*2a. Without prejudice to paragraph 3, the Fundamental Rights Officer shall nominate at least one fundamental rights monitor per operation. The Fundamental Rights Officer shall also decide to nominate fundamental rights monitor to monitor any other operational activity he or she considers relevant.*

*The monitor shall have access to all areas in which the operational activity of the Agency takes place and to all its documents relevant for the implementation of that activity.*

*3. Fundamental rights monitors may be nominated by the Fundamental Rights Officer as forced return monitors for the pool referred to in Article 52. Where fundamental rights monitors act as forced return monitors, the provisions of Article 51(5) and 52 shall be applicable to them mutatis mutandis.*

4. *The fundamental rights monitors shall be appointed by the Fundamental Rights Officer and be under his/her hierarchical supervision. They shall be independent in the performance of their duties. When being present in an operational area, they shall wear an insignia clearly allowing for their identification as fundamental rights monitors.*

5. *The Agency shall ensure that within one year following the entry into force of this Regulation at least 40 fundamental rights monitors are recruited by the Agency. The need for increasing the number shall be assessed annually by the executive director in consultation with the Fundamental rights officer. Following the assessment the executive director shall, where necessary, propose to the management board to increase the number of monitors for the following year based on operational needs.*

6. *Following their recruitment, the fundamental rights monitors shall undergo an enhanced fundamental rights training taking into account the previously acquired qualifications and professional experience in the relevant areas. Throughout their employment, the Agency shall ensure that the fundamental rights monitors discharge their duties according to the highest standards. Adequate training maps shall be designed for each monitor ensuring their constant professional qualification to fulfil their task as fundamental rights monitors.*

## Article 108

### *Complaints mechanism*

1. The Agency shall, in cooperation with the fundamental rights officer, take the necessary measures to set up **and further develop** ~~a complaints~~ **an independent and effective 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 **or a failure to act** of staff involved in a joint operation, pilot project, rapid border intervention, migration management support team deployment, joint return operation, ~~or~~ return intervention **or an operational activity of the Agency in a third country**, 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 a failure to act**, or any party representing such a person, may submit a complaint in writing to the Agency.
3. Only **complaints that are** substantiated ~~complaints involving~~ **and involve** 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~~ **and** complaints concerning members of the teams to the home Member State, ~~inform~~ **including** the relevant authority or body competent for fundamental rights in a Member State **for further action in accordance with their mandate. The fundamental rights officer shall also** ~~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~~ **declared inadmissible**, complainants shall be informed of the reasons and, if possible, provided with further options for addressing their concerns.

***The Agency shall provide for an appropriate procedure in case of a complaint be declared inadmissible or unfounded.***

Any decision shall be in written form and reasoned. ***The fundamental rights officer shall reopen the case if the complainant submits new evidence in situations where the case has been deemed inadmissible.***

6. In ~~the case of a registered complaint concerning a staff member of the Agency, the executive director~~ ***fundamental rights officer*** shall ~~ensure~~ ***recommend to the executive director*** appropriate follow-up, ~~in consultation with the fundamental rights officer,~~ including disciplinary measures, ***and where appropriate, referral to civil or criminal justice procedures as necessary in accordance with this Regulation and national law.*** The executive director shall ***ensure the appropriate follow up and report back to the fundamental rights officer*** within a determined timeframe, ***and if necessary, at regular intervals thereafter, regarding the implementation of disciplinary measures*** ~~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~~ ***consult the Agency's data protection officer of the Agency before taking his or her decision on the complaint.*** 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.

*In case of a registered ~~that concerns a team member~~ **complaint concerning 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 **and referral to civil or criminal justice procedures** 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~~ **to a** complaint within a determined time period, and if necessary, at regular intervals thereafter. The Agency shall follow-up the matter if no report is received from the relevant Member State.*

*Where the relevant Member State, within the determined time period, does not report back or provides only an inconclusive response, the fundamental rights officer shall inform the executive director and the management board.*

8. Where a team member is found to have violated fundamental rights or international protection obligations, the Agency ~~may~~ **shall** 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. In accordance with Article 107 (2), ~~t~~The fundamental rights officer shall **in his or her annual report include information on the complaints mechanism, including specific references to the executive director and to the management board** as to the Agency's and Member States' findings and follow-up **follow-ups** 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 *and be easily accessible, including on mobile devices*, 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. ***The Agency shall ensure that further guidance and assistance on the complaints procedure is provided to complainants.***

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]~~ ***Regulation (EU) 2018/1725*** 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 (EU) 2018/1725*** ~~[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 108a*

### *Interparliamentary cooperation*

- 1. In order to address the specific nature of the European Border and Coast Guard as being composed of national authorities and the Agency and to ensure the effective scrutiny functions by the European Parliament of the Agency and by the national parliaments of the responsible national authorities as assigned to them by the Treaties and by the national constitutional systems of the Member States respectively, the European Parliament and the national parliaments may cooperate in the framework of Article 9 of Protocol 1.*
- 2. When invited by the European Parliament and the national parliaments meeting within this context, the executive director and the chair of the management board shall attend such meetings.*
- 3. The Agency shall transmit its annual activity report to the national parliaments.*

## *Article 109*

### *Language arrangements*

1. The provisions laid down in Regulation No 1 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 ~~(40)~~(j) of Article 98(2), ***the annual work programme, the code of conduct, strategic risk analyses, comprehensive information on past and current joint operations, rapid border interventions, pilot projects, technical assistance projects with third countries, migration management support teams, return operations or return interventions, including in third countries, and working arrangements*** and ensure, without prejudice to Article 91, in particular that the public and any interested party are rapidly given objective, ***detailed***, 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>37</sup> shall apply.

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<sup>37</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).

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

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 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.

***The Agency shall ensure lobby transparency through a transparency register by disclosing all its meetings with third party stakeholders. The transparency register shall include all meetings and contacts of the executive director, deputy executive directors and heads of division in matters concerning procurements and tenders for services, equipment or outsourced projects and studies. The Agency shall keep a record of all meetings of its staff with third party stakeholders in matters concerning procurements and tenders for services, equipment or outsourced projects and studies.***

## *Article 114 a*

### *Administrative inquiries*

***The activities of the European Border and Coast Guard Agency shall be subject to the inquiries of the European Ombudsman in accordance with Article 228 TFEU.***

## *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.

## *Article 116*

### *Evaluation*

1. ***Without prejudice to Article 59,*** ~~By [31 May 2023]~~ ***four years after the entry into force of this Regulation,*** 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, ***resources*** and tasks;
- (b) the impact, effectiveness and efficiency of the Agency's performance and its working practices in relation to its objectives, mandate and tasks;
- (c) ***inter-agency cooperation at the European level, including*** 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
- (f) *the functioning of European Border and Coast Guard standing corps and, as from the second evaluation, assessing its overall number and composition.*
- (fa) *the level of training, specialised expertise and professionalism possessed by the staff of the European Border and Coast Guard standing corps.*

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.

*1a. The evaluation shall also assess the attractiveness of the Agency as an employer for the recruitment of statutory staff with a view of ensuring quality of the candidates and geographical balance.*

*1b. When carrying out the evaluation the Commission shall seek input from relevant stakeholders, including the consultative forum and the European Union Agency for Fundamental Rights.*

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. *Where necessary, the report shall be accompanied by a legislative proposal.*

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 ~~that~~ **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.

***When carrying out the evaluation the Commission shall seek input from relevant stakeholders, including the consultative forum and the European Union Agency for Fundamental Rights.***

# CHAPTER IV

## Final provisions

### *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 and transitional provisions*

1. Regulation (EU) No 1052/2013 is repealed *with the exception of Article 9 (3), (5), (7-10) and Article 10 (5) and (7) that shall continue to apply pending the entry into force of the implementing act referred to in Article 25(4) of this Regulation.*
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 2021.

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. **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.**~~

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 80 shall start to apply from the date of the effective transfer of the system referred to in Article 80.**~~

#### *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, 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.~~

3. *By way of derogation, Member States may continue to apply on a voluntary basis the provisions of Articles 19 and corresponding provisions on EUROSUR related to border checks and air border surveillance up to two years after the entry into force of this Regulation.*
4. *Deployments in accordance with Article 55 to 58 shall take place as of 1 January 2021.*
5. *For the deployments in 2021, the decisions referred to Article 55 (4) and 64 (6) shall be adopted by the Management Board by 31 March 2020.*
6. *For the purpose of supporting the development of human resources to secure the contributions of the Member States to the European Border and Coast Guard standing corps, Member States are entitled to receive funding in the year 2020 in accordance with Article 61(1)(a). The numbers in Annex III for the year 2022 shall be used as a reference for the relevant funding in 2020.*
7. *In order to effectively contribute with the required capacities of category I staff to the first deployments of the EBCG standing corps and the setting of the ETIAS central unit, the Agency shall launch the necessary preparations, including recruitment and training, as of the entry into force of this Regulation and in accordance with the budgetary rules.*

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

Done at Brussels,

## ANNEX I

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

Category Year	Category 1 Agency Staff	Category 2 Operational staff for long term secondments	Category 3 Operational staff for short term deployments	Total for the European Border and Coast Guard standing Corps	Category 4
<b>2020</b>	1500	1500	7000	10000	
<b>2021</b>	20001000	2000400	60003600	100005000	1500
<b>2022</b>	20001000	2000500	60003500	100005000	1500
<b>2023</b>	25001500	2500500	50004000	100006000	1500
<b>2024</b>	25001500	2500750	50004250	100006500	1500
<b>2025</b>	30002000	30001000	40005000	100008000	0
<b>2026</b>	30002500	30001250	40005250	100009000	0
<b>2027</b>	3000	30001500	40005500	10000	0

## 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 *capacities* 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

Country / Year	2020	2021	2022	2023	2024	2025	2026	2027
Belgium	30	408	4010	5010	5015	6020	6025	6030
Bulgaria	40	5311	5313	6713	6720	8027	8033	8040
Czech Republic	20	275	277	337	3310	4013	4017	4020
Denmark	29	398	3910	4810	4815	5819	5824	5829
Germany	225	29861	29873	37773	377110	450152	450187	450225
Estonia	18	245	246	306	309	3612	3615	3618
Greece	50	6713	6717	8317	8325	10033	10042	10050
Spain	111	14830	14837	18537	18556	22274	22293	222111
France	170	22546	22556	28556	28583	340114	340141	340170
Croatia	65	8717	8722	10822	10833	13043	13054	13065
Italy	125	16733	16742	20842	20863	25083	250104	250125
Cyprus	8	112	113	133	134	165	167	168
Latvia	30	408	4010	5010	5015	6020	6025	6030
Lithuania	39	5210	5213	6513	6520	7826	7833	7839
Luxembourg	8	112	113	133	134	165	167	168
Hungary	65	8717	8722	10822	10833	13043	13054	13065
Malta	6	82	82	102	103	124	125	126
Netherlands	50	6713	6717	8317	8325	10033	10042	10050
Austria	34	459	4511	5711	5717	6823	6828	6834

<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>Poland</b>	100	13327	13333	16733	16750	20067	20083	200100
<b>Portugal</b>	47	638	6310	7810	7815	9420	9425	9430

<b>Romania</b>	<i>75</i>	<i>10020</i>	<i>10025</i>	<i>12525</i>	<i>12538</i>	<i>15050</i>	<i>15063</i>	<i>15075</i>
<b>Slovenia</b>	<i>35</i>	<i>479</i>	<i>4712</i>	<i>5812</i>	<i>5818</i>	<i>7023</i>	<i>7029</i>	<i>7035</i>
<b>Slovakia</b>	<i>35</i>	<i>479</i>	<i>4712</i>	<i>5812</i>	<i>5818</i>	<i>7023</i>	<i>7029</i>	<i>7035</i>
<b>Finland</b>	<i>30</i>	<i>408</i>	<i>4010</i>	<i>5010</i>	<i>5015</i>	<i>6020</i>	<i>6025</i>	<i>6030</i>
<b>Sweden</b>	<i>17</i>	<i>239</i>	<i>2311</i>	<i>2811</i>	<i>2817</i>	<i>3423</i>	<i>3428</i>	<i>34</i>
<b>[Switzerland]</b>	<i>16</i>	<i>214</i>	<i>215</i>	<i>275</i>	<i>278</i>	<i>3211</i>	<i>3213</i>	<i>3216</i>
<b>[Iceland]</b>	<i>2</i>	<i>31</i>	<i>31</i>	<i>31</i>	<i>31</i>	<i>41</i>	<i>42</i>	<i>42</i>
<b>[Liechtenstein]*</b>	<i>0</i>	<i>0</i>	<i>0</i>	<i>0</i>	<i>0</i>	<i>0</i>	<i>0</i>	<i>0</i>
<b>[Norway]</b>	<i>20</i>	<i>275</i>	<i>277</i>	<i>337</i>	<i>3310</i>	<i>4013</i>	<i>4017</i>	<i>4020</i>
<b>TOTAL</b>	<i>1500</i>	<i>2000</i> <i>400</i>	<i>2000</i> <i>500</i>	<i>2500</i> <i>500</i>	<i>2500</i> <i>750</i>	<i>3000</i> <i>1000</i>	<i>3000</i> <i>1250</i>	<i>3000</i> <i>1500</i>

## ANNEX IV

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

Country / Year	2020	2021	2022	2023	2024	2025	2026	2027
Belgium	140	12072	12070	10080	10085	80100	80105	80110
Bulgaria	187	16096	16093	133107	133113	107133	107140	107147
Czech Republic	93	8048	8047	6753	6757	5367	5370	5373
Denmark	135	11670	11668	9777	9782	7797	77102	77106
Germany	1052	900540	900523	748602	748637	602748	602785	602827
Estonia	84	7243	7242	6048	6051	4860	4863	4866
Greece	233	200120	200117	167133	167142	133167	133175	133183
Spain	518	444266	444259	370296	370315	296370	296389	296407
France	795	680408	680396	565454	565481	455566	455593	455624
Croatia	303	260156	260152	217173	217184	173217	173228	173238
Italy	583	500300	500292	417333	417354	333417	333438	333458
Cyprus	37	3219	3219	2721	2723	2127	2128	2129
Latvia	140	12072	12070	10080	10085	80100	80105	80110
Lithuania	182	15694	15691	130104	130111	104130	104137	104143
Luxembourg	37	3219	3219	2721	2723	2127	2128	2129
Hungary	303	260156	260152	217173	217184	173217	173228	173238
Malta	28	2414	2414	2016	2017	1620	1621	1622
Netherlands	233	200120	200117	167133	167142	133167	133175	133183
Austria	159	13682	13679	11391	11396	91113	91119	91125

<b>Poland</b>	467	400240	400233	333267	333283	267333	267350	267367
<b>Portugal</b>	219	18872	18870	15780	15785	125100	1251105	125110
<b>Romania</b>	350	300180	300175	250200	250213	200250	200263	200275
<b>Slovenia</b>	163	14084	14082	11793	11799	93117	93123	93128
<b>Slovakia</b>	163	14084	14082	11793	11799	93117	93123	93128
<b>Finland</b>	140	12072	12070	10080	10085	80100	80105	80110
<b>Sweden</b>	79	6882	6879	5791	5796	45113	45119	45125

[Switzerland]	75	6438	6437	5343	5345	4353	4356	4359
[Iceland]	9	85	85	75	76	57	57	57
[Liechtenstein]*	0	0	0	0	0	0	0	0
[Norway]	93	8048	8047	6753	6757	5367	5370	5373
<b>TOTAL</b>	7000	6000 <b>3600</b>	6000 <b>3500</b>	5000 <b>4000</b>	5000 <b>4250</b>	4000 <b>5000</b>	4000 <b>5250</b>	4000 <b>5500</b>

## 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.

*Weapons, ammunition and equipment can be carried and used only during operations. Carrying or using them off duty periods is not allowed.*

*In accordance with Article 83 (6), the use of force and weapons by the Agency's statutory operational staff shall be exercised in accordance with the national law of the host Member State and in the presence of border guards of the host Member State.*

*Without prejudice to the authorization by the host Member State and the applicability of its national law to the use of force during operations, ~~t~~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 operational plan agreed between the Executive Director and the host Member State will define the conditions for carrying and use of firearm weapons in accordance with national law or operating procedures during operations.*

### *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~~ **minimises** injury or damage to the greatest possible extent. ***If the measures lead to an unacceptable result, the operational staff may waive the measure.*** 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 **and human dignity**. 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. ***They may only be used for the shortest time possible and only when strictly necessary.***

**3. PRACTICAL RULES FOR USE OF FORCE, SERVICE WEAPON, AMMUNITION AND EQUIPMENT DURING OPERATIONS**

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

*In accordance with Article 83(6), 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 host Member State may prohibit the carrying of certain service weapons, ammunition and equipment in accordance with Article 83(6) second indent.*

*Without prejudice to the authorization by the host Member State and the applicability of its national law to the use of force during operations, ~~the~~ use of force and weapons by the Agency's statutory operational staff shall:*

- (a) comply with the core principles referred to in Part 1 and specific rules referred to in Part 2*
- (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 Agency's Code of Conduct*

### 34. 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 *and on applicable fundamental rights safeguards*. 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 *and shall include a practical simulation involving the operationalisation of fundamental rights safeguards*.

*The Agency shall provide statutory staff with ongoing training on the use of force. This training shall take place as per the training provided for in Article 62(2). In order for the statutory staff to be allowed to carry service weapons and to use force, they shall be required to have successfully completed the annual ongoing training. The annual ongoing training shall cover theoretical and practical aspects as described above. The annual ongoing training shall last at least 24 hours in total, with the theoretical training taking at least 8 hours and the practical training taking at least 16 hours. The practical training shall be divided into at least 8 hours for physical training, using physical restraint techniques, and at least 8 hours for the use of firearms.*

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

The Agency's statutory operational staff shall not consume alcohol while on duty or *be under influence of alcohol* at a reasonable ~~that~~ 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.

### **Supervisory mechanism**

*The Agency shall establish a supervisory mechanism as referred to in Article 56 (3) (a).*

### **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 1087.

## 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 *their application in* 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 *or host third country*. 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 *thoroughly investigated and* reported without delay to the Executive Director. *The results of the investigation shall be transmitted to the consultative forum.*

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.

## **45. 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 ***and may be used only as measures of last resort***. 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 ***as referred to in Article 56(3a)***.



*ANNEX Va*

*Capacities of Member States to be provided to the European Border and Coast Guard standing corps through the Reserve for Rapid Reaction Pool in accordance with Article 58a*

<i>Country / Year</i>	
<i>Belgium</i>	<i>30</i>
<i>Bulgaria</i>	<i>40</i>
<i>Czech Republic</i>	<i>20</i>
<i>Denmark</i>	<i>29</i>
<i>Germany</i>	<i>225</i>
<i>Estonia</i>	<i>18</i>
<i>Greece</i>	<i>50</i>
<i>Spain</i>	<i>111</i>
<i>France</i>	<i>170</i>
<i>Croatia</i>	<i>65</i>
<i>Italy</i>	<i>125</i>
<i>Cyprus</i>	<i>8</i>
<i>Latvia</i>	<i>30</i>
<i>Lithuania</i>	<i>39</i>
<i>Luxembourg</i>	<i>8</i>
<i>Hungary</i>	<i>65</i>
<i>Malta</i>	<i>6</i>
<i>Netherlands</i>	<i>50</i>
<i>Austria</i>	<i>34</i>
<i>Poland</i>	<i>100</i>
<i>Portugal</i>	<i>30</i>

<i>Romania</i>	<i>75</i>
<i>Slovenia</i>	<i>35</i>
<i>Slovakia</i>	<i>35</i>
<i>Finland</i>	<i>30</i>
<i>Sweden</i>	<i>34</i>
<i>[Switzerland]</i>	<i>16</i>
<i>[Iceland]</i>	<i>2</i>
<i>[Liechtenstein]*</i>	<i>0</i>
<i>[Norway]</i>	<i>20</i>
<b><i>TOTAL</i></b>	<b><i>1500</i></b>

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