



**EUROPEAN UNION**

**THE EUROPEAN PARLIAMENT**

**THE COUNCIL**

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Subject: REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the European Border and Coast Guard and amending Regulation (EU) 2016/399 of the European Parliament and of the Council and repealing Regulation (EC) No 863/2007 of the European Parliament and of the Council, Council Regulation (EC) No 2007/2004 and Council Decision 2005/267/EC

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**REGULATION (EU) 2016/...**  
**OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

of ...

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

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the European Commission,

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

Having regard to the opinion of the European Economic and Social Committee<sup>1</sup>,

Acting in accordance with the ordinary legislative procedure<sup>2</sup>,

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<sup>1</sup> Opinion of 25 May 2016 (OJ C 303, 19.8.2016, p. 109).

<sup>2</sup> Position of the European Parliament of 6 July 2016 (not yet published in the Official Journal) and decision of the Council of ....

Whereas:

- (1) At its meeting on 25 and 26 June 2015, the European Council called for wider efforts in resolving unprecedented migratory flows towards Union territory in a comprehensive manner, including by reinforcing border management to better manage growing mixed migratory flows. Furthermore, at their informal meeting on migration on 23 September 2015, the Heads of State or Government stressed the need to tackle the dramatic situation at the external borders and to strengthen the controls at those borders, in particular through additional resources for the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union, the European Asylum Support Office (EASO), and Europol, with human resources and technical contributions from Member States.
- (2) The objective of Union policy in the field of external border management is to develop and implement European integrated border management at national and Union level, which is a necessary corollary to the free movement of persons within the Union and is a fundamental component of an area of freedom, security and justice. European integrated border management is central to improving migration management. 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.

- (3) 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.
- (4) When implementing European integrated border management, coherence with other policy objectives should be ensured, including the proper functioning of cross-border transport.
- (5) To ensure the effective implementation of European integrated border management, 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 comprise the European Border and Coast Guard Agency ('the Agency') and national authorities which are responsible for border management, including coast guards to the extent that they carry out border control tasks. 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.
- (6) 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. While Member States retain the primary responsibility for the management of their external borders in their interest and in the interest of all Member States, the Agency should support the application of Union measures relating to the management of the external borders by reinforcing, assessing and coordinating the actions of Member States which implement those measures.

- (7) 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.
- (8) 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.
- (9) The European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union, commonly referred to as Frontex, was established by Council Regulation (EC) No 2007/2004<sup>1</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.
- (10) It is necessary to monitor the crossing of the external borders efficiently, address migratory challenges and potential future threats at the external borders, ensure a high level of internal security within the Union, safeguard the functioning of the Schengen area and respect the overarching principle of solidarity. In light of this, it is necessary to reinforce the management of the external borders by building on the work of Frontex and further developing it into an agency with a shared responsibility for the management of the external borders.

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<sup>1</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).

- (11) The tasks of the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union should therefore be expanded. To reflect those changes, it should be renamed the European Border and Coast Guard Agency, which will continue to be commonly referred to as Frontex. It should remain the same legal person, with full continuity in all its activities and procedures. The key role of the Agency should be to establish a technical and operational strategy for implementation of integrated border management at Union level; to oversee the effective functioning of border control at the external borders; to provide increased technical and operational assistance to Member States 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; and to organise, coordinate and conduct return operations and return interventions.
- (12) 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.
- (13) The Agency should carry out its tasks without prejudice to the competence of the Member States with regard to defence.
- (14) The extended tasks and competence of the Agency should be balanced with strengthened fundamental rights safeguards and increased accountability.

- (15) Member States should be able to continue cooperation at an 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 this cooperation is compatible with the action of the Agency.
- (16) The Agency relies on the cooperation of Member States to be able to perform its tasks effectively. In this respect, it is important for the Agency and the Member States to act in good faith and to 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.
- (17) Member States should also, in their own interests and in the interests of other Member States, enter data into the European databases. Equally, they should ensure that the data are accurate, up-to-date and obtained and entered lawfully.
- (18) The Agency should prepare general and tailored risk analyses based on a common integrated risk analysis model, to be applied by the Agency itself and by Member States. The Agency should, based also on information provided by Member States, provide adequate information covering all aspects relevant to European integrated border management, especially border control, return, irregular secondary movements of third-country nationals within the Union, prevention of cross-border crime including facilitation of unauthorised border crossings, trafficking in human beings, terrorism and threats of a hybrid nature, as well as the situation in neighbouring third countries, so as to allow for appropriate measures to be taken or to tackle identified threats and risks with a view to improving the integrated management of the external borders.

- (19) Given its activities at the external borders, the Agency should contribute to preventing and detecting serious crime with a cross-border dimension, such as the migrant smuggling, trafficking in human beings and terrorism, where it is appropriate for it to act and where it has obtained relevant information through its activities. It should coordinate its activities with Europol as the agency responsible for supporting and strengthening Member States' actions and their cooperation in preventing and combating serious crime affecting two or more Member States. Cross-border crimes necessarily entail a cross-border dimension. Such a cross-border dimension is characterised by crimes directly linked to unauthorised crossings of the external borders, including trafficking in human beings or smuggling of migrants. That said, Article 1(2) of Council Directive 2002/90/EC<sup>1</sup> allows Member States not to impose sanctions where the aim of the behaviour is to provide humanitarian assistance to migrants.
- (20) In a spirit of shared responsibility, the role of the Agency should be to monitor regularly the management of the external borders. The Agency should ensure proper and effective monitoring not only through risk analysis, information exchange and European Border Surveillance System (EUROSUR), 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.

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<sup>1</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).



- (21) 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. This 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. 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.
- (22) If the Agency is not provided with accurate and speedy 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.
- (23) The Agency should organise the appropriate technical and operational assistance to Member States so as to reinforce their capacity to implement their obligations with regard to the control of the external borders and to face challenges at the external borders resulting from illegal immigration or cross-border crime. Such assistance should be without prejudice to the relevant national authorities' competence to initiate criminal investigations. In this respect, the Agency should, at the request of a Member State or on its own initiative, organise and coordinate joint operations for one or more Member States and deploy European Border and Coast Guard teams as well as the necessary technical equipment. It may also deploy experts from among its own staff.

- (24) In cases where there is a specific and disproportionate challenge at the external borders, the Agency should, at the request of a Member State or on its own initiative, organise and coordinate rapid border interventions and deploy both European Border and Coast Guard teams from a rapid reaction pool and technical equipment. 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 border guards and other relevant staff available to the rapid reaction pool and provide the necessary technical equipment. The Agency and the Member State concerned should agree upon an operational plan.
- (25) 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. This should be provided in hotspot areas by migration management support teams. These teams should be composed of experts to be deployed from Member States by the Agency and by EASO and from the Agency, Europol or other relevant Union agencies. The Agency should assist the Commission in the coordination among the different agencies on the ground.

- (26) 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.
- (27) In hotspot areas the different agencies and Member States should operate within their respective mandates and powers. The Commission, in cooperation with the other relevant agencies, should ensure the compliance of activities in the hotspot areas with the relevant Union *acquis*, including the Common European Asylum System and fundamental rights.

(28) 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 propose to the Council a decision identifying the measures to be implemented by the Agency and 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 because of the potentially politically sensitive nature of the measures to be decided, which are likely to touch on national executive and enforcement powers. The Agency should determine the actions to be taken for the practical execution of the measures indicated in the Council decision. It should then draw up an operational plan with the Member State concerned. If a Member State does not comply within 30 days with that 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>1</sup> to face exceptional circumstances putting the overall functioning of the area without internal border control at risk. Therefore, Regulation (EU) 2016/399 should be amended accordingly.

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

- (29) The Agency should have the necessary equipment and staff at its disposal to be deployed in joint operations or rapid border interventions. To this end, when launching rapid border interventions at the request of a Member State or in the context of a situation requiring urgent action, the Agency should be able to deploy, in the Member States, European Border and Coast Guard teams from a rapid reaction pool which should be a standing corps composed of border guards and other relevant staff. There should be a minimum of 1 500 border guards and other relevant staff in the pool. The deployment of the European Border and Coast Guard teams from the rapid reaction pool should be immediately complemented by additional European Border and Coast Guard teams where necessary.
- (30) Annex I sets out the contributions of Member States to the rapid reaction pool on the basis of pledges in light of the circumstances pertaining at the time of the entry into force of this Regulation. If those circumstances change substantially and structurally, including when a decision on the lifting of controls on Member States' internal borders, pursuant to the provisions of the relevant Acts of Accession, has been taken, the Commission should propose the appropriate amendments to that Annex.
- (31) Having regard to the rapidity with which deployment of equipment and staff would need to take place in particular at areas of the external borders facing sudden large inward migratory flow, the Agency should also be able to deploy its own technical equipment which it should acquire itself or in co-ownership with a Member State. That technical equipment should be made available to the Agency upon its request by the Member States where the equipment is registered. The Agency should also manage a pool of technical equipment provided by Member States, based on the needs identified by the Agency and which should be completed by the means of transport and operating equipment purchased by Member States under the Specific Actions of the Internal Security Fund.

- (32) On 15 October 2015, the European Council called for an enlargement of Frontex's mandate on return, to include the right to organise joint return operations on its own initiative and an enhancement of its role regarding the acquisition of travel documents for returnees.
- (33) 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 of the European Parliament and of the Council<sup>1</sup>. 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.
- (34) The Agency should, in full respect for fundamental rights, provide the necessary assistance to Member States in organising return operations and return interventions of returnees. It should not enter into the merits of return decisions issued by 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.
- (35) The assistance to Member States in carrying out return procedures should include the provision of practical information on third countries of return relevant for the implementation of this Regulation, such as the provision of contact details or other logistical information necessary for the smooth conduct of return operations. For the purposes of taking return decisions, the Agency should not be involved in the provision of information to Member States on third countries of return.

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<sup>1</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).

- (36) The possible existence of an arrangement between a Member State and a third country does not absolve the Agency or the Member States from their obligations under Union or international law, in particular as regards compliance with the principle of *non-refoulement*.
- (37) The Agency should establish pools of forced-return monitors, forced-return escorts and return specialists made available by Member States, who should be deployed during return operations and who should form part of tailor-made European return intervention teams deployed in return interventions. The pools should include staff with specific expertise in child protection. The Agency should provide them with the necessary training.
- (38) In accordance with international law instruments such as the United Nations Convention on the Rights of the Child, any individual below the age of 18 is to be considered as a child under this Regulation. The child's best interests are to be a primary consideration in the activities of the Agency.
- (39) Special provision should be made for staff involved in activities relating to return to specify their tasks, powers and responsibilities. Special instructions should also be issued concerning the power of the pilots in charge of aircraft and the extension of the criminal jurisdiction of the country of registration of the aircraft under international aviation law, in particular the Tokyo Convention on Offences and certain other acts committed on board aircraft.

- (40) The Agency should develop specific training tools, including specific training in the protection of children. It should provide training at Union level for national instructors of border guards. It should also offer additional training courses and seminars related to integrated border management tasks, including for officers of the competent national bodies. This should include training on relevant Union and international law and on fundamental rights. The Agency should be authorised to organise training activities in cooperation with Member States and third countries on their territory.
- (41) The Agency should monitor and contribute to the developments in research relevant for European integrated border management. It should disseminate information on such developments to the European Parliament, the Member States, and to the Commission.
- (42) Effective implementation of an integrated management of the external borders requires regular, swift and reliable exchange of information among the Member States. The Agency should develop and operate information systems facilitating such exchange in accordance with Union data protection legislation. It is important that Member States provide the Agency promptly with complete and accurate information that it needs to perform its tasks.
- (43) For the purpose of fulfilling its mission and to the extent required for the accomplishment of its tasks, the Agency may cooperate with Union institutions, bodies, offices and agencies as well as with international organisations in matters covered by this Regulation in the framework of working arrangements concluded in accordance with Union law and policy. Those working arrangements should receive the Commission's prior approval.



- (44) 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<sup>1</sup> and the European Maritime Safety Agency established by Regulation (EC) No 1406/2002 of the European Parliament and of the Council<sup>2</sup> 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.
- (45) The implementation of this Regulation does not affect the division of competence between the Union and the Member States under the Treaties, or the obligations of Member States under international conventions such as the United Nations Convention on the Law of the Sea, the International Convention for the Safety of Life at Sea, the International Convention on Maritime Search and Rescue, the International Convention for the Prevention of Pollution from Ships, the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, and other relevant international maritime instruments.

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

<sup>2</sup> Regulation (EC) No 1406/2002 of the European Parliament and of the Council of 27 June 2002 establishing a European Maritime Safety Agency (OJ L 208, 5.8.2002, p.1).

- (46) The Agency should facilitate and encourage technical and operational cooperation between Member States and third countries in the framework of the external relations policy of the Union. In this context, it should coordinate operational cooperation between Member States and third countries in the field of management of the external borders, deploy liaison officers to third countries and cooperate with the authorities of third countries on return, including as regards the acquisition of travel documents. In their cooperation with third countries, the Agency and Member States should comply with Union law at all times, including fundamental rights and the principle of *non-refoulement*. They should likewise do so when the cooperation with third countries takes place on the territory of those countries. In order to increase transparency and accountability, the Agency should report on cooperation with third countries in its annual report.
- (47) The European Border and Coast Guard, which includes the Agency and the national authorities of Member States which are responsible for border management, including coast guards to the extent that they carry out border control tasks, should fulfil its tasks in full respect for fundamental rights, in particular the Charter of Fundamental Rights of the European Union ('the Charter'), the European Convention for the Protection of Human Rights and Fundamental Freedoms, relevant international law, including the United Nations Convention on the Rights of the Child, the Convention on the Elimination of All Forms of Discrimination Against Women, the Convention Relating to the Status of Refugees and obligations related to access to international protection, in particular the principle of *non-refoulement*, the United Nations Convention on the Law of the Sea, the International Convention for the Safety of Life at Sea, and the International Convention on Maritime Search and Rescue. In accordance with Union law and those instruments the Agency should assist Member States in conducting search and rescue operations in order to protect and save lives whenever and wherever so required.

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

- (50) 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.
- (51) 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.

- (52) 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 so as 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 the deputy executive director. The Agency should be governed and operated taking into account the principles of the common approach on Union decentralised agencies adopted on 19 July 2012 by the European Parliament, the Council and the Commission.
- (53) In order to guarantee the autonomy of the Agency, it should be granted a stand-alone budget whose revenue comes mostly from a contribution from the Union. The Union budgetary procedure should be applicable as far as the Union contribution and any other subsidies chargeable to the general budget of the Union are concerned. The auditing of accounts should be undertaken by the Court of Auditors.

- (54) Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council<sup>1</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>2</sup>.
- (55) Regulation (EC) No 1049/2001 of the European Parliament and of the Council<sup>3</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 information on all of its activities. It should likewise ensure that the public and any interested party are rapidly given information with regard to its work.
- (56) The Agency should also report on its activities to the European Parliament and to the Council to the fullest extent.

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<sup>1</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>2</sup> OJ L 136, 31.5.1999, p. 15.

<sup>3</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).

- (57) Any processing of personal data by the Agency within the framework of this Regulation should be conducted in accordance with Regulation (EC) No 45/2001 of the European Parliament and of the Council<sup>1</sup>.
- (58) Any processing of personal data by Member States within the framework of this Regulation should be conducted in accordance with Directive 95/46/EC of the European Parliament and of the Council<sup>2</sup>. In cases where the processing of data is necessary primarily for the purpose of ensuring a high level of internal security within the Union, especially in the context of actions relating to the monitoring of migratory flows and risk analysis, the processing of personal data collected during joint operations, pilot projects and rapid border interventions and by migration management support teams, or the cooperation with Union institutions, bodies, offices, agencies, and international organisations, Council Framework Decision 2008/977/JHA<sup>3</sup> applies. Any processing of personal data should respect the principles of necessity and proportionality.

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

<sup>2</sup> Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (OJ L 281, 23.11.1995, p. 31).

<sup>3</sup> Council Framework Decision 2008/977/JHA of 27 November 2008 on the protection of personal data processed in the framework of police and judicial cooperation in criminal matters (OJ L 350, 30.12.2008, p. 60).

- (59) 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.
- (60) 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).



(61) 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>1</sup>, which fall within the area referred to in point A of Article 1 of Council Decision 1999/437/EC<sup>2</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>3</sup> provides for rules on the participation by those countries in the work of the Agency, including provisions on financial contributions and staff.

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<sup>1</sup> OJ L 176, 10.7.1999, p. 36.

<sup>2</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>3</sup> OJ L 188, 20.7.2007, p. 19.

(62) 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>1</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>2</sup>.

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<sup>1</sup> OJ L 53, 27.2.2008, p. 52.

<sup>2</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).

- (63) 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>1</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>2</sup>.
- (64) 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>3</sup> provides for rules on the participation by those countries in the work of the Agency, including provisions on financial contributions and staff.

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<sup>1</sup> OJ L 160, 18.6.2011, p. 21.

<sup>2</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>3</sup> OJ L 243, 16.9.2010, p. 4.

- (65) 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.
- (66) 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>1</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.
- (67) 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>2</sup>; Ireland is therefore not taking part in the adoption of this Regulation and is not bound by it or subject to its application.

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<sup>1</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>2</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).

- (68) 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 and the United Kingdom may be invited to attend meetings of the management board which allow them to participate fully in the preparation of such specific activities.
- (69) A controversy exists between the Kingdom of Spain and the United Kingdom on the demarcation of the borders of Gibraltar.
- (70) 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.
- (71) The European Data Protection Supervisor was consulted in accordance with Article 28(2) of Regulation (EC) No 45/2001 and delivered an opinion on 18 March 2016<sup>1</sup>.

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<sup>1</sup> OJ C 186, 25.5.2016, p. 10.

(72) This Regulation aims to amend and expand the provisions of Regulation (EC) No 2007/2004 and Regulation (EC) No 863/2007 of the European Parliament and of the Council<sup>1</sup>, and Council Decision 2005/267/EC<sup>2</sup>. Since the amendments to be made are substantial in number and nature, those acts should, in the interests of clarity, be replaced and repealed,

HAVE ADOPTED THIS REGULATION:

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<sup>1</sup> Regulation (EC) No 863/2007 of the European Parliament and of the Council of 11 July 2007 establishing a mechanism for the creation of Rapid Border Intervention Teams and amending Council Regulation (EC) No 2007/2004 as regards that mechanism and regulating the tasks and powers of guest officers (OJ L 199, 31.7.2007, p. 30).

<sup>2</sup> Council Decision 2005/267/EC of 16 March 2005 establishing a secure web-based Information and Coordination Network for Member States' Migration Management Services (OJ L 83, 1.4.2005, p. 48).

# Chapter I

## European Border and Coast Guard

### *Article 1*

#### *Subject matter*

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

### *Article 2*

#### *Definitions*

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

- (1) ‘external borders’ means external borders as defined in point (2) of Article 2 of Regulation (EU) 2016/399, to which Title II of that Regulation applies;
- (2) ‘border control’ means border control as defined in point 10 of Article 2 of Regulation (EU) 2016/399;
- (3) ‘border guard’ means border guard as defined in point 14 of Article 2 of Regulation (EU) 2016/399;

- (4) ‘European Border and Coast Guard teams’ means teams of border guards and other relevant staff from participating Member States, including border guards and other relevant staff who are seconded as national experts by Member States to the European Border and Coast Guard Agency, to be deployed during joint operations, rapid border interventions as well as in the framework of migration management support teams;
- (5) ‘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;
- (6) ‘home Member State’ means the Member State of which a member of a European Border and Coast Guard team is a border guard or other relevant staff member;
- (7) ‘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, border guards and other relevant staff deployed as part of the European Border and Coast Guard teams, 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;
- (8) ‘member of the teams’ means a member of the European Border and Coast Guard teams or teams of staff involved in return-related tasks participating in return operations or return interventions;



- (9) ‘migration management support team’ means a team of experts which provide technical and operational reinforcement to Member States at hotspot areas and which is composed of experts deployed from Member States by the European Border and Coast Guard Agency and by the European Asylum Support Office, and from the European Border and Coast Guard Agency, Europol or other relevant Union agencies;
- (10) ‘Hotspot area’ means an area in which the host Member State, the Commission, relevant Union agencies and participating Member States cooperate, with the aim of managing an existing or potential disproportionate migratory challenge characterised by a significant increase in the number of migrants arriving at the external borders;
- (11) ‘return’ means return as defined in point 3 of Article 3 of Directive 2008/115/EC;
- (12) ‘return decision’ means an administrative or judicial decision or act, stating or declaring the stay of a third-country national to be illegal and imposing or stating an obligation to return that respects Directive 2008/115/EC;
- (13) ‘returnee’ means an illegally staying third-country national who is the subject of a return decision issued by a Member State;
- (14) ‘return operation’ means an operation that is coordinated by the European Border and Coast Guard Agency and involves technical and operational reinforcement being provided by one or more Member States under which returnees from one or more Member States are returned either on a forced or voluntary basis;

- (15) ‘return intervention’ means an activity of the European Border and Coast Guard Agency providing Member States with enhanced technical and operational assistance consisting of the deployment of European return intervention teams to Member States and the organisation of return operations.
- (16) ‘Cross-border crime’ means any serious crime with a cross-border dimension committed at or along, or which is related to, the external borders.

### *Article 3*

#### *European Border and Coast Guard*

1. The European Border and Coast Guard Agency (‘the Agency’) and the national authorities of Member States which are responsible for border management, including coast guards to the extent that they carry out border control tasks, shall constitute the European Border and Coast Guard.
2. The Agency shall, by decision of the management board based on a proposal of the executive director, establish a technical and operational strategy for European integrated border management. The Agency shall take into account, where justified, the specific situation of the Member States, in particular their geographical location. This strategy shall be in line with Article 4. It shall promote and support the implementation of European integrated border management in all Member States.
3. The national authorities which are responsible for border management, including coast guards to the extent that they carry out border control tasks, shall establish their national strategies for integrated border management. Those national strategies shall be in line with Article 4 and the strategy referred to in paragraph 2 of this Article.

*Article 4*  
*European integrated border management*

European integrated border management shall consist of the following components:

- (a) border control, including measures to facilitate legitimate border crossings and, where appropriate, measures related to the prevention and detection of cross-border crime, such as migrant smuggling, trafficking in human beings and terrorism, and measures related to the referral of persons who are in need of, or wish to apply for, international protection;
- (b) search and rescue operations for persons in distress at sea launched and carried out in accordance with Regulation (EU) No 656/2014 of the European Parliament and the Council<sup>1</sup> 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;
- (d) cooperation between Member States supported and coordinated by the Agency;

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<sup>1</sup> Regulation (EU) No 656/2014 of the European Parliament and of the Council of 15 May 2014 establishing rules for the surveillance of the external sea borders in the context of operational cooperation coordinated by the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (OJ L 189, 27.6.2014, p. 93).

- (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 and among the relevant Union institutions, bodies, offices and agencies; including the regular exchange of information through existing information exchange tools, such as the European Border Surveillance System ('EUROSUR') established by Regulation (EU) No 1052/2013 of the European Parliament and of the Council<sup>1</sup>;
- (f) cooperation with third countries in the areas covered by this Regulation, focusing in particular on neighbouring countries and on those third countries which have been identified through risk analysis as being countries of origin and/or transit for illegal immigration;
- (g) technical and operational measures within the Schengen area which are related to border control and designed to address illegal immigration and to counter cross-border crime better;
- (h) return of third-country nationals who are the subject of return decisions issued by a Member State;
- (i) use of state-of-the-art technology including large-scale information systems;
- (j) a quality control mechanism, in particular the Schengen evaluation mechanism and possible national mechanisms, to ensure the implementation of Union legislation in the area of border management;
- (k) solidarity mechanisms, in particular Union funding instruments.

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<sup>1</sup> Regulation (EU) No 1052/2013 of the European Parliament and of the Council of 22 October 2013 establishing the European Border Surveillance System (EurosUR) (OJ L 295, 6.11.2013, p. 11).

*Article 5*  
*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. Member States shall ensure the management of their external borders, in their own interests and in the common interest of all Member States in full compliance with Union law and in line with the technical and operational strategy referred to in Article 3(2), in close cooperation with the Agency.
3. The Agency shall support the application of Union measures relating to the management of the external borders by reinforcing, assessing and coordinating the actions of Member States in the implementation of those measures and in return.

## **Chapter II**

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

#### **SECTION 1**

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

##### *Article 6*

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

1. The European Border and Coast Guard Agency shall be the new name for the European Agency for the Management of Operational Cooperation at the External Borders of the Members States of the European Union established by Regulation (EC) No 2007/2004. Its activities shall be based on this Regulation.
2. 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, in particular the Schengen Borders Code established by Regulation (EU) 2016/399.
3. The Agency shall contribute to the continuous and uniform application of Union law, including the Union *acquis* on fundamental rights, at all external borders. Its contribution shall include the exchange of good practices.

*Article 7*  
*Accountability*

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

*Article 8*  
*Tasks*

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:
  - (a) monitor migratory flows and carry out risk analysis as regards all aspects of integrated border management;
  - (b) carry out a vulnerability assessment including the assessment of the capacity and readiness of Member States to face threats and challenges at the external borders;
  - (c) monitor the management of the external borders through liaison officers of the Agency in Member States;
  - (d) 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;

- (e) 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;
- (f) 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;
- (g) set up and deploy European Border and Coast Guard teams, including a rapid reaction pool, that are to be deployed during joint operations and in rapid border interventions and within the framework of the migration management support teams;
- (h) set up a technical equipment pool to be deployed in joint operations, rapid border interventions and in the framework of migration management support teams, as well as in return operations and return interventions;
- (i) within the framework of the migration management support teams at hotspot areas:
  - (i) deploy European Border and Coast Guard teams and technical equipment to provide assistance in screening, debriefing, identification and fingerprinting;
  - (ii) establish a procedure for referring and providing initial information to persons who are in need of, or wish to apply for, international protection, in cooperation with the European Asylum Support Office (EASO) and national authorities;



- (j) support the development of technical standards for equipment, especially for tactical-level command, control and communication as well as technical surveillance to ensure interoperability at Union and national level;
- (k) deploy the necessary equipment and border guards and other relevant staff from the rapid reaction pool for the practical execution of the measures needed to be taken in a situation requiring urgent action at the external borders;
- (l) assist Member States in circumstances requiring increased technical and operational assistance to implement the obligation to return returnees, including through the coordination or organisation of return operations;
- (m) 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;
- (n) set up pools of forced-return monitors, forced-return escorts and return specialists;
- (o) set up and deploy European return intervention teams during return interventions;
- (p) assist Member States on training of national border guards, other relevant staff and experts on return, including the establishment of common training standards;
- (q) participate in the development and management of research and innovation activities relevant for the control and surveillance of the external borders, including the use of advanced surveillance technology, and develop pilot projects regarding matters covered by this Regulation;

- (r) develop and operate, in accordance with Regulation (EC) No 45/2001 and Framework Decision 2008/977/JHA, information systems that enable swift and reliable exchanges of information regarding emerging risks 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 Council Decision 2008/381/EC<sup>1</sup>;
- (s) provide the necessary assistance for the development and operation of the EUROSUR and, as appropriate, for the development of a common information-sharing environment, including interoperability of systems, in particular by developing, maintaining and coordinating the EUROSUR framework in accordance with Regulation (EU) No 1052/2013;
- (t) cooperate with the European Fisheries Control Agency and the European Maritime Safety Agency, each within its mandate, to support the national authorities carrying out coast guard functions as set out in Article 53, by providing services, information, equipment and training, as well as by coordinating multipurpose operations;
- (u) assist Member States and third countries in the context of technical and operational cooperation between them in the matters covered by this Regulation.

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<sup>1</sup> Council Decision 2008/381/EC of 14 May 2008 establishing a European Migration Network (OJ L 131, 21.5.2008, p. 7).

2. Member States may continue cooperation at an operational level with other Member States and/or third countries, where such cooperation is compatible with the tasks of the Agency. Member States shall refrain from any activity which could jeopardise the functioning of the Agency or the attainment of its objectives. Member States shall report to the Agency on that operational cooperation with other Member States and/or third countries at the external borders and in the field of return. The executive director shall inform the management board on those matters on a regular basis and at least once a year.
3. The Agency shall engage in communication activities on its own initiative on matters falling within its mandate. It shall provide the public with accurate and comprehensive information about its activities.

Communication activities shall not be detrimental to the tasks referred to in paragraph 1, 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 50 and in accordance with relevant communication and dissemination plans adopted by the management board.

## SECTION 2

### MONITORING AND CRISIS PREVENTION

#### *Article 9*

##### *Duty to cooperate in good faith*

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

#### *Article 10*

##### *Obligation to exchange information*

In order to perform the tasks conferred on them by this Regulation, in particular for the Agency to monitor the migratory flows towards and within the Union, to carry out risk analysis and to perform the vulnerability assessment, the 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.

## *Article 11*

### *Monitoring of migratory flows and risk analysis*

1. The Agency shall monitor migratory flows towards and within the Union, trends and other possible challenges at the external borders of the Union. For this purpose, the Agency shall, by a decision of the management board based on a proposal of the executive director, establish a common integrated risk analysis model, which shall be applied by the Agency and the Member States. It shall also carry out the vulnerability assessment in accordance with Article 13.
2. The Agency shall prepare general risk analyses, which shall be submitted to the European Parliament, to the Council and to the Commission in accordance with Article 50, and tailored risk analyses for operational activities.
3. The risk analysis prepared by the Agency shall cover all aspects relevant to European integrated border management with a view to developing a pre-warning mechanism.
4. Member States shall provide the Agency with all necessary information regarding the situation, trends and possible threats at the external borders and in the field of return. Member States shall regularly, or upon the request of the Agency, provide it with all relevant information such as statistical and operational data collected in relation to the implementation of the Schengen *acquis* as well as information from the analysis layer of the national situational picture established in accordance with Regulation (EU) No 1052/2013.
5. The results of the risk analysis shall be submitted in a timely and accurate manner to the management board.

6. Member States shall take results of the risk analysis into account when planning their operations and activities at the external borders 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.

## *Article 12*

### *Liaison officers in Member States*

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

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

2. The executive director shall appoint experts from the staff of the Agency to be deployed as liaison officers. The executive director shall, based on risk analysis and in consultation with the 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 in Article 11;
  - (c) support the collection of information referred to in Article 13 and required by the Agency, to carry out the vulnerability assessment;
  - (d) monitor the measures taken by the Member State at border sections to which a high impact level has been attributed in accordance with Regulation (EU) No 1052/2013;
  - (e) contribute to promoting the application of the Union *acquis* relating to the management of the external borders, including with regard to respect for fundamental rights;
  - (f) where possible assist the Member States in preparing their contingency plans concerning border management;
  - (g) facilitate the communication between the Member State and the Agency, share relevant information from the Agency with the Member State, including information about ongoing operations;

- (h) report regularly to the executive director on the situation at the external borders and the capacity of the Member State concerned to deal effectively with the situation at the external borders; report also on the execution of return operations towards relevant third countries;
- (i) monitor the measures taken by the Member State with regard to a situation requiring urgent action at the external borders as referred to in Article 19.

If the liaison officer's reports referred to in point (h) raise concerns about one or more aspects relevant for the Member State concerned, the latter will be informed without delay by the executive director.

- 4. For the purposes of paragraph 3, the liaison officer shall, in compliance with the national and Union security and data protection rules:
  - (a) receive information from the national coordination centre and the national situational picture established in accordance with Regulation (EU) No 1052/2013;
  - (b) keep regular contacts with national authorities which are responsible for border management, including coast guards to the extent that they carry out border control tasks, whilst informing a point of contact designated by the Member State concerned.
- 5. The report of the liaison officer shall form part of the vulnerability assessment as referred to in Article 13. The report shall be transmitted to the Member State concerned.
- 6. In carrying out their duties, the liaison officers shall take instructions only from the Agency.



### *Article 13*

#### *Vulnerability assessment*

1. The Agency shall, by decision of the management board based on a proposal of the executive director, establish a common vulnerability assessment methodology. This shall include 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.
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. It shall do so as a preventive measure on the basis of a risk analysis prepared in accordance with Article 11(3). The Agency shall carry out such monitoring and assessment at least once a year, unless the executive director, based on risk assessments or a previous vulnerability assessment, decides otherwise.
3. Member States shall, at the request of the Agency, provide information as regards technical equipment, staff and to the extent possible, the financial resources available at national level to carry out border control. Member States shall also provide information on their contingency plans on border management at the Agency's request.

4. The aim of the vulnerability assessment is for the Agency to assess the capacity and readiness of Member States to face upcoming challenges, including present and future threats and challenges at the external borders; to identify, especially for those Member States facing specific and disproportionate challenges, possible immediate consequences at the external borders and subsequent consequences on the functioning of the Schengen area; and to assess their capacity to contribute to the rapid reaction pool referred to in Article 20(5). That assessment is without prejudice to the Schengen evaluation mechanism.

In this assessment, the Agency shall take into account Member States' capacity to carry out all border management tasks, including their capacity to deal with the potential arrival of large numbers of persons on their territory.

5. The results of the vulnerability assessment shall be submitted to the Member States concerned. The Member States concerned may comment on that assessment.
6. 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.
7. The executive director shall base the measures to be recommended to the Member States concerned on the results of the vulnerability assessment, taking into account the Agency's risk analysis, the comments of the Member State concerned and the results of the Schengen evaluation mechanism.

These measures should be aimed at eliminating the vulnerabilities identified in the assessment in order for Member States to increase their readiness to face upcoming challenges by enhancing or improving their capabilities, technical equipment, systems, resources and contingency plans.

8. Where a Member State does not implement the necessary measures of the recommendation within the time limit referred to in paragraph 6 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 19.
9. The results of the vulnerability assessment shall be transmitted, in accordance with Article 50, on a regular basis and at least once a year to the European Parliament, to the Council and to the Commission.

**SECTION 3**  
**EXTERNAL BORDER MANAGEMENT**

*Article 14*

*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 19.
2. The Agency shall organise the appropriate technical and operational assistance for the host Member State and it may, acting in accordance with the relevant Union and international law, including the principle of *non-refoulement*, take one or more of the following measures:
  - (a) coordinate joint operations for one or more Member States and deploy European Border and Coast Guard teams;
  - (b) organise rapid border interventions and deploy European Border and Coast Guard teams from the rapid reaction pool, and as appropriate additional European Border and Coast Guards teams;
  - (c) coordinate activities for one or more Member States and third countries at the external borders, including joint operations with neighbouring third countries;
  - (d) deploy European Border and Coast Guard teams in the framework of the migration management support teams at hotspot areas;

- (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) deploy its own experts as well as members of the teams who had been seconded by the Member States to the Agency to support the competent national authorities of the Member States involved for the appropriate duration;
  - (g) deploy technical equipment.
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 15*

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

1. A Member State may request that the Agency launch joint operations to face upcoming challenges, including illegal immigration, present or future threats at its external borders or cross-border crime, or to provide increased technical and operational assistance when implementing its obligations with regard to the control of the external borders.

2. At the request of a Member State faced with a situation of specific and disproportionate challenges, especially the arrival at points of the external borders of large numbers of third-country nationals trying to enter the territory of that Member State without authorisation, the Agency may deploy a rapid border intervention for a limited period of time on the territory of that host Member State.
3. The executive director shall evaluate, approve and coordinate proposals for joint operations made by Member States. Joint operations and rapid border interventions shall be preceded by a thorough, reliable and up-to-date risk analysis, thereby enabling the Agency to set an order of priority for the proposed joint operations and rapid border interventions, taking into account the impact on external border sections in accordance with Regulation (EU) No 1052/2013 and the availability of resources.
4. The executive director shall, based on the results of the vulnerability assessment, and taking into account the Agency's risk analysis and the analysis layer of the European situational picture established in accordance with Regulation (EU) No 1052/2013, recommend to the Member State concerned to initiate and carry out joint operations or rapid border interventions. The Agency shall put its technical equipment at the disposal of the host or participating Member States.
5. The objectives of a joint operation or rapid border intervention may be achieved as part of a multipurpose operation. Such operations may involve coast guard functions and the prevention of cross-border crime, including the fight against migrant smuggling or trafficking in human beings, and migration management, including identification, registration, debriefing and return.

*Article 16*

*Operational plan for joint operations*

1. In preparation of a joint operation the executive director, in cooperation with the host Member State, shall draw up a list of technical equipment and staff needed taking into account the host Member State's available resources. On the basis of those elements, the Agency shall define a package of technical and operational reinforcement as well as capacity-building activities to be included in the operational plan.
2. The executive director shall draw up an operational plan for joint operations at the external borders. The executive director and the host Member State, in consultation with the participating Member States, shall agree on the operational plan detailing the organisational and procedural aspects of the joint operation.
3. The operational plan shall be binding on the Agency, the host Member State and the participating Member States. It shall cover all aspects considered necessary for carrying out the joint operation, including the following:
  - (a) a description of the situation, with *modus operandi* and objectives of the deployment, including the operational aim;
  - (b) the foreseeable duration of the joint operation;
  - (c) the geographical area where the joint operation will take place;

- (d) a description of the tasks, responsibilities, including with regard to the respect for fundamental rights, and special instructions for the European Border and Coast Guard teams, including on permissible consultation of databases and permissible service weapons, ammunition and equipment in the host Member State;
- (e) the composition of the European Border and Coast Guard teams as well as the deployment of other relevant staff;
- (f) command and control provisions, including the names and ranks of the border guards of the host Member State responsible for cooperating with the members of the teams and the Agency, in particular the names and ranks of those border guards who are in command during the period of deployment, and the place of the members of the teams in the chain of command;
- (g) the technical equipment to be deployed during the joint operation, including specific requirements such as conditions for use, requested crew, transport and other logistics, and financial provisions;
- (h) detailed provisions on immediate incident reporting by the Agency to the management board and to relevant national authorities;
- (i) a reporting and evaluation scheme containing benchmarks for the evaluation report, including with regard to the protection of fundamental rights, and final date of submission of the final evaluation report;



- (j) regarding sea operations, specific information on the application of the relevant jurisdiction and legislation in the geographical area where the joint operation takes place, including references to national, international and Union law regarding interception, rescue at sea and disembarkation. In that regard the operational plan shall be established in accordance with Regulation (EU) No 656/2014;
  - (k) the terms of cooperation with third countries, other Union bodies, offices and agencies or international organisations;
  - (l) procedures whereby persons in need of international protection, victims of trafficking in human beings, unaccompanied minors and persons in a vulnerable situation are directed to the competent national authorities for appropriate assistance;
  - (m) procedures setting out a mechanism to receive and transmit to the Agency a complaint against all persons participating in a joint operation or rapid border intervention, including border guards or other relevant staff of the host Member State and members of the European Border and Coast Guard teams alleging breaches of fundamental rights in the context of their participation in a joint operation or rapid border intervention;
  - (n) logistical arrangements including information on working conditions and the environment of the areas in which the joint operation is foreseen to take place.
4. Any amendments to or adaptations of the operational plan shall require the agreement of the executive director and the host Member State, after consultation of the participating Member States. A copy of the amended or adapted operational plan shall immediately be sent by the Agency to the participating Member States.

*Article 17*

*Procedure for launching a rapid border intervention*

1. A request by a Member State to launch a rapid border intervention shall include a description of the situation, possible aims and envisaged needs. If required, the executive director may immediately send experts from the Agency to assess the situation at the external borders of the Member State concerned.
2. The executive director shall immediately inform the management board of a Member State's request to launch a rapid border intervention.
3. When deciding on the request of a Member State, the executive director shall take into account the findings of the Agency's risk analyses and the analysis layer of the European situational picture established in accordance with Regulation (EU) No 1052/2013 as well as the outcome of the vulnerability assessment referred to in Article 13 and any other relevant information provided by the Member State concerned or another Member State.
4. The executive director shall take a decision on the request to launch a rapid border intervention within two working days from the date of receipt of the request. The executive director shall simultaneously notify the Member State concerned and the management board in writing of the decision. The decision shall state the main reasons on which it is based.

5. If the executive director decides to launch a rapid border intervention, he or she shall deploy European Border and Coast Guard teams from the rapid reaction pool in accordance with Article 20(5) and the rapid reaction equipment pool in accordance with Article 39(7), and where necessary, he or she shall decide on the immediate reinforcement by one or more European Border and Coast Guard teams, in accordance with Article 20(8).
6. The executive director together with the host Member State shall draw up an operational plan as referred to in Article 16(3) immediately and, in any event, no later than three working days from the date of the decision.
7. As soon as the operational plan has been agreed upon and provided to the Member States, the executive director shall request in writing the Member States to immediately deploy the border guards or other relevant staff that form part of the rapid reaction pool. The executive director shall indicate the profiles and numbers of border guards or other relevant staff, required from each Member State from among those identified in the rapid reaction pool.
8. In parallel to the deployment referred to in paragraph 7, and where necessary, to secure the immediate reinforcement of the European Border and Coast Guard teams deployed from the rapid reaction pool, the executive director shall inform the Member States of the requested number and profiles of border guards or other relevant staff which are to be additionally deployed. This information shall be provided in writing to the national contact points and shall indicate the date on which the deployment is to take place. A copy of the operational plan shall also be provided to them.

9. Member States shall ensure that the number and profiles of the border guards or other relevant staff assigned to the rapid reaction pool are immediately made available to the Agency to guarantee a complete deployment in accordance with Article 20(5) and (7). Member States shall also make additional border guards and other relevant staff available from the national pool in accordance with Article 20(8).
10. Deployment of the rapid reaction pool shall take place no later than five working days after the date on which the operational plan is agreed between the executive director and the host Member State. Additional deployment of European Border and Coast Guard teams, shall take place where necessary, within seven working days of the deployment of the rapid reaction pool.
11. If the rapid reaction pool is deployed, the executive director shall, in consultation with the management board, immediately consider the priorities with regard to the Agency's ongoing and foreseen joint operations at other external borders in order to provide for possible reallocation of resources to the areas of the external borders where a strengthened deployment is most needed.

*Article 18*

*Migration management support teams*

1. 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 may request technical and operational reinforcement by migration management support teams. That Member State shall submit a request for reinforcement and an assessment of its needs to the Agency and other relevant Union agencies in particular EASO and Europol.
2. The executive director, in coordination with other relevant Union agencies, shall assess 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.
3. The Commission shall, in cooperation with the host Member State and the relevant 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.

4. The technical and operational reinforcement provided by the European Border and Coast Guard teams, the European return intervention teams and experts from the Agency's staff in the framework of the migration management support teams, may include:
- (a) 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 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 EASO;
  - (c) technical and operational assistance in the field of return, including the preparation and organisation of return operations.
5. Migration management support teams shall, where necessary, include staff with expertise in child protection, trafficking in human beings, protection against gender-based persecution and/or fundamental rights.

*Article 19*

*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 13(8); 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 15, 17 or 18, or is not taking the necessary steps to implement actions under those Articles,

the Council, on the basis of a proposal from the Commission, may adopt without delay a decision by means of an implementing act, 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.
2. If a situation requiring urgent action arises, the European Parliament shall be informed of that situation without delay and shall be informed of all subsequent measures and decisions taken in response.

3. To mitigate the risk of putting in jeopardy the Schengen area, the 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 European Border and Coast Guard teams from the rapid reaction pool, and additional European Border and Coast Guards teams as appropriate;
  - (b) deploy European Border and Coast Guard teams in the framework of the migration management support teams at hotspot areas;
  - (c) coordinate activities for one or more Member States and third countries at the external borders, including joint operations with neighbouring third countries;
  - (d) deploy technical equipment;
  - (e) organise return interventions.
  
4. The executive director shall, within two working days from the date of adoption of the 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 border guards and other relevant staff needed to meet the objectives of that decision;
  - (b) draw up an operational plan and submit it to the Member States concerned.



5. The executive director and the Member State concerned shall agree on the operational plan within 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 staff from the rapid reaction pool referred to in Article 20(5) for the practical execution of the measures identified in the Council decision referred to in paragraph 1 of this Article. Additional European Border and Coast Guard teams shall be deployed as necessary at a second stage and in any case within seven working days from the deployment of the rapid reaction pool.
7. The Agency shall, without delay and in any case within 10 working days from establishment of the operational plan, deploy the necessary technical equipment for practical execution of the measures identified in the Council decision referred to in paragraph 1.

Additional technical equipment shall be deployed as necessary at a second stage in accordance with Article 39.

8. The Member State concerned shall comply with the Council decision referred to in paragraph 1. For that purpose it shall immediately cooperate with the Agency and take the necessary action to facilitate the implementation of that decision and the practical execution of the measures set out in that decision and in the operational plan agreed upon with the executive director.

9. The Member States shall make available the border guards and other relevant staff or staff involved in return-related tasks, determined by the executive director in accordance with paragraph 4 of this Article. The Member States may not invoke the situation referred to in Article 20(3) and (8).
10. If the Member State concerned does not comply with the Council decision referred to in paragraph 1 within 30 days and does not cooperate with the Agency as provided for under paragraph 8 of this Article, the Commission may trigger the procedure provided for in Article 29 of Regulation (EU) 2016/399.

#### *Article 20*

#### *Composition and deployment of European Border and Coast Guard teams*

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

3. The contribution by Member States as regards their border guards to specific joint operations for the following year shall be planned on the basis of annual bilateral negotiations and agreements between the Agency and Member States. In accordance with those agreements, Member States shall make the border guards available for deployment at the request of the Agency, unless they are faced with an exceptional situation substantially affecting the discharge of national tasks. Such a request shall be made at least 21 working days before the intended deployment. If a Member State invokes such an exceptional situation, it shall provide 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 paragraph 12.
  
4. As regards rapid border interventions, on a proposal by the executive director, the management board shall decide by a three-quarters majority on the profiles and the minimum number of border guards or other relevant staff that correspond to those profiles to be made available for a rapid reaction pool of European Border and Coast Guard teams. The same procedure shall apply with regard to any subsequent changes in the profiles and the overall number of border guards or other relevant staff of the rapid reaction pool. Member States shall contribute to the rapid reaction pool via a national expert pool on the basis of the various defined profiles by nominating border guards or other relevant staff corresponding to the required profiles.

5. The rapid reaction pool shall be a standing corps placed at the immediate disposal of the Agency and which can be deployed from each Member State within five working days from when the operational plan is agreed upon by the executive director and the host Member State. For that purpose, each Member State shall, on a yearly basis, make available to the Agency a number of border guards or other relevant staff. Their profiles shall be as defined in the decision of the management board. The total number of staff made available by the Member States shall amount to a minimum of 1 500 border guards or other relevant staff. The Agency may verify whether the border guards proposed by Member States correspond to the defined profiles. The Agency may request that a Member State remove a border guard from the pool in the case of misconduct or infringement of the applicable rules.
6. Each Member State shall be responsible for its contribution to the number of border guards or other relevant staff, as referred to in paragraph 5, in accordance with Annex I.
7. Member States shall make the border guards and/or other relevant staff from the rapid reaction pool available for deployment at the request of the Agency. If a risk analysis and any available vulnerability assessment show that a Member State is faced with a situation that would substantially affect the discharge of national tasks, its contribution to the deployment of a rapid border intervention shall be half of its contribution fixed in Annex I. A host Member State where a rapid border intervention is taking place shall not deploy staff forming part of its fixed contribution to the rapid reaction pool. If there is a shortage of staff for deployment in the rapid border intervention, the management board shall decide how that shortage is to be filled based on a proposal of the executive director.

8. Where necessary, the deployment of European Border and Coast Guard teams from the rapid reaction pool shall be immediately supplemented by additional European Border and Coast Guard teams. For that purpose, Member States shall, at the request of the Agency, immediately communicate the number, names and profiles of border guards and other relevant staff from their national pool whom they are able to make available within seven working days from the start of the rapid border intervention. Member States shall make the border guards and other relevant staff available for deployment at the request of the Agency unless they are faced with an exceptional situation substantially affecting the discharge of national tasks. If a Member State invokes such an exceptional situation, it shall provide 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 paragraph 12.
9. If a situation arises in which more border guards are required than provided for under paragraphs 5 and 8, the executive director shall immediately inform the European Parliament, the Council and the Commission. He or she shall also call upon the Council to seek commitments from Member States to meet the shortage.
10. Member States shall ensure that the border guards and other relevant staff which they contribute match the profiles and the numbers decided upon by the management board. The duration of the deployment shall be determined by the home Member State but in any 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.

11. The Agency shall contribute to the European Border and Coast Guard teams with competent border guards or other relevant staff seconded by the Member States as national experts to the Agency. The contribution by Member States as regards the secondment of their border guards or other relevant staff to the Agency for the following year shall be planned on the basis of annual bilateral negotiations and agreements between the Agency and Member States. In accordance with those agreements, Member States shall make the border guards or other relevant staff available for secondment, unless that would seriously affect the discharge of national tasks. In such situations Member States may recall their seconded border guards or other relevant staff.

Such secondments may be for 12 months or more but in any event shall not be for less than three months. The seconded border guards and other relevant staff shall be considered to be members of the teams and they shall have the tasks and powers of the members of their teams. The Member State that has seconded those border guards or other relevant staff shall be considered to be their home Member State.

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

12. The Agency shall inform the European Parliament on an annual basis of the number of border guards that each Member State has committed and the number of border guards actually deployed to the European Border and Coast Guard teams in accordance with this Article. This report shall list the Member States that have invoked the exceptional situation referred to in paragraphs 3 and 8 in the previous year. It shall also include the reasons and information provided by the Member State concerned.

### *Article 21*

#### *Instructions to the European Border and Coast Guard teams*

1. During deployment of European Border and Coast Guard teams, the host Member State shall issue instructions to the teams in accordance with the operational plan.
2. The Agency, through its coordinating officer, may communicate its views to the host Member State on the instructions given to European Border and Coast Guard teams. In that case, the host Member State shall take those views into consideration and follow them to the extent possible.
3. In cases where the instructions issued to the European Border and Coast Guard teams are not in compliance with the operational plan, the coordinating officer shall immediately report to the executive director, who may, if appropriate, take action in accordance with Article 25(3).

4. Members of the teams shall, in the performance of their tasks and in the exercise of their powers, fully respect fundamental rights, including access to asylum procedures, and human dignity. Any measures taken in the performance of their tasks and in the exercise of their powers shall be proportionate to the objectives pursued by such measures. While performing their tasks and exercising their powers, they shall not discriminate against persons on grounds of sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation.
5. Members of the teams shall remain subject to the disciplinary measures of their home Member State. The home Member State shall provide for appropriate disciplinary or other measures in accordance with its national law regarding violations of fundamental rights or international protection obligations in the course of a joint operation or rapid border intervention.

#### *Article 22*

#### *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 staff members of the Agency.
2. The executive director shall appoint one or more experts from the 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 European Border and Coast Guard teams. The role of the coordinating officer shall be to foster cooperation and coordination among host and participating Member States. In particular, the coordinating officer shall:
- (a) act as an interface between the Agency, the host Member State and the members of the European Border and Coast Guard teams, providing assistance, on behalf of the Agency, on all issues relating to the conditions of their deployment to the teams;
  - (b) monitor the correct implementation of the operational plan, including as regards the protection of fundamental rights and report to the Agency on this;
  - (c) act on behalf of the Agency in all aspects of the deployment of the European Border and Coast Guard teams and report to the Agency on all those aspects;
  - (d) report to the executive director where the instructions issued to the European Border and Coast Guard teams by the host Member States are not in compliance with the operational plan.
4. In the context of joint operations or rapid border interventions, the executive director may authorise the coordinating officer to assist in resolving any disagreement on the execution of the operational plan and deployment of the teams.

*Article 23*

*National contact point*

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

*Article 24*

*Costs*

1. The Agency shall fully meet the following costs incurred by Member States in making available their border guards and other relevant staff for the purposes of deploying European Border and Coast Guard teams, including the rapid reaction pool:
  - (a) travel costs from the home Member State to the host Member State and from the host Member State to the home Member State;
  - (b) costs related to vaccinations;
  - (c) costs related to special insurance needs;
  - (d) costs related to health care;
  - (e) daily subsistence allowances, including accommodation costs;
  - (f) costs related to the Agency's technical equipment.

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

*Article 25*

*Suspension or termination of activities*

1. The executive director shall terminate activities of the Agency if the conditions to conduct those activities are no longer fulfilled. The executive director shall inform the Member State concerned prior to such termination.
2. The Member States participating in a joint operation, rapid border intervention or migration management support team deployment may request that the executive director terminate that joint operation, or rapid border intervention or migration management support team deployment.
3. The executive director may, after informing the Member State concerned, withdraw the financing of an activity or suspend or terminate it if the operational plan is not respected by the host Member State.

4. The executive director shall, after consulting the fundamental rights officer and informing the Member State concerned, withdraw the financing of a joint operation, rapid border intervention, pilot project, migration management support team deployment, return operation, return intervention or working arrangement or suspend or terminate, in whole or in part such activities, if he or she considers that there are violations of fundamental rights or international protection obligations that are of a serious nature or are likely to persist. The executive director shall inform the management board of such a decision.
5. If the executive director decides to suspend or terminate deployment by the Agency of a migration management support team, he or she shall inform the other relevant agencies active in that hotspot area of that decision.

#### *Article 26*

#### *Evaluation of activities*

The executive director shall evaluate the results of the joint operations and rapid border interventions, pilot projects, migration management support team deployments and operational cooperation with third countries. He or she shall transmit detailed evaluation reports within 60 days following the end of those activities to the management board, together with the observations of the fundamental rights officer. The executive director shall make a comprehensive comparative analysis of those results with a view to enhancing the quality, coherence and effectiveness of future activities, and shall include that analysis in the Agency's annual activity report.

## SECTION 4

### RETURN

#### *Article 27*

##### *Return*

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

- (d) 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;
  - (e) finance or co-finance the operations, interventions and activities referred to in this Chapter from its budget, in accordance with the financial rules applicable to the Agency.
2. The technical and operational assistance referred to in point (b) of paragraph 1 shall include activities to help Member States carry out return procedures by the competent national authorities by providing, in particular:
- (a) interpreting services;
  - (b) practical information on third countries of return relevant for the implementation of this Regulation, in cooperation, where appropriate, with other Union bodies, offices and agencies, including EASO;
  - (c) advice on the implementation and management of return procedures in compliance with Directive 2008/115/EC;
  - (d) advice and assistance on measures necessary to ensure the availability of returnees for return purposes and to prevent returnees from absconding, in accordance with Directive 2008/115/EC and international law.
3. The Agency shall aim at building synergies and connecting Union-funded networks and programmes in the field of return in close cooperation with the Commission and with the support of relevant stakeholders, including the European Migration Network.

4. The Agency may make use of the financial means of the Union which are available for return activities. The Agency shall ensure that in its grant agreements with Member States any financial support is conditional upon the full respect for the Charter.

*Article 28*

*Return operations*

1. Without entering into the merits of return decisions and in accordance with Directive 2008/115/EC, the Agency shall provide the necessary assistance and, at the request of one or several participating Member States, ensure the coordination or the organisation of return operations, including through the chartering of aircraft for the purpose of such operations. The Agency may, on its own initiative, propose to Member States that it coordinate or organise return operations.
2. Member States shall on a monthly basis inform the Agency of their indicative planning of the number of returnees and 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 a rolling operational plan to provide the requesting Member States with the necessary operational reinforcements, including through technical equipment. The Agency may, on its own initiative or at the request of a Member State, include in the rolling operational plan the dates and destinations of return operations it considers necessary, based on a needs assessment. The management board shall decide, on a proposal of the executive director, on the *modus operandi* of the rolling operational plan.

3. The Agency may provide the necessary assistance and, either at the request of the participating Member States or on the basis of its own proposal, ensure the coordination or the organisation of return operations for which the means of transport and forced-return escorts are provided by a third country of return ('collecting return operations'). The participating Member States and the Agency shall ensure that the respect for fundamental rights, the principle of *non-refoulement*, and the proportionate use of means of constraints are guaranteed during the entire return operation. At least one Member State representative, and one forced-return monitor from the pool established under Article 29 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.



6. Every return operation shall be monitored in accordance with Article 8(6) of Directive 2008/115/EC. The monitoring of forced-return operations shall be carried out by the forced-return monitor on the basis of objective and transparent criteria and shall cover the whole return operation from the pre-departure phase until the hand-over of the returnees in the third country of return. The forced-return monitor shall submit a report on each forced-return operation to the executive director, the fundamental rights officer and to the competent national authorities of all the Member States involved in the given operation. If necessary, appropriate follow-up shall be ensured by the executive director and competent national authorities respectively.
7. If the Agency has concerns regarding the respect of fundamental rights in respect of return operation, it shall communicate them to the participating Member States and to the Commission.
8. The executive director shall evaluate the results of the return operations. Every six months, he or she shall transmit a detailed evaluation report covering all return operations conducted in the previous semester to the management board, together with the observations of the fundamental rights officer. The executive director shall make a comprehensive comparative analysis of those results with a view to enhancing the quality, coherence and effectiveness of future return operations. The executive director shall include that analysis in the Agency's annual activity report.
9. 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.

*Article 29*

*Pool of forced-return monitors*

1. The Agency shall, after consulting the fundamental rights officer, constitute a pool of forced-return monitors from competent bodies who carry out forced-return monitoring activities in accordance with Article 8(6) of Directive 2008/115/EC and who have been trained in accordance with Article 36 of this Regulation.
2. The management board shall, on a proposal of the executive director determine the profile and the number of forced-return monitors to be made available to that pool. The same procedure shall apply with regard to any subsequent changes in the profile and overall numbers. Member States shall be responsible for contributing to the pool by nominating forced-return monitors corresponding to the defined profile. Forced-return monitors with specific expertise in child protection shall be included in the pool.
3. Member States' contribution of forced-return monitors to return operations and interventions for the following year shall be planned on the basis of annual bilateral negotiations and agreements between the Agency and Member States. In accordance with those agreements, Member States shall make the forced-return monitors available for deployment at the request of the Agency, unless they are faced with an exceptional situation substantially affecting the discharge of national tasks. Such a request shall be made at least 21 working days before the intended deployment, or five working days in case of a rapid return intervention.

4. The Agency shall make the forced-return monitors available upon request to participating Member States to monitor, on their behalf, the correct implementation of the return operation and return interventions throughout their duration. It shall make available forced-return monitors with specific expertise in child protection for any return operation involving children.
5. Forced-return monitors shall remain subject to the disciplinary measures of their home Member State in the course of a return operation or return intervention.

*Article 30*

*Pool of forced-return escorts*

1. The Agency shall constitute a pool of forced-return escorts from national competent bodies who carry out return operations in accordance with the requirements referred to in Article 8(4) and (5) of Directive 2008/115/EC and who have been trained in accordance with Article 36 of this Regulation.
2. The management board on a proposal of the executive director shall determine the profile and the number of forced-return escorts to be made available to that pool. The same procedure shall apply with regard to any subsequent changes in the profile and overall numbers. Member States shall contribute to the pool by nominating forced-return escorts corresponding to the defined profile. Forced-return escorts with specific expertise in child protection shall be included in the pool.

3. Member States' contribution of forced-return escorts 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 escorts available for deployment at the request of the Agency, unless they are faced with an exceptional situation substantially affecting the discharge of national tasks. Such a request shall be made at least 21 working days before the intended deployment, or five working days in case of a rapid return intervention.
4. The Agency shall make the forced-return escorts available upon request to participating Member States to escort returnees on their behalf and to take part in return operations and interventions. It shall make available forced-return escorts with specific expertise in child protection for any return operation involving children.
5. Forced-return escorts shall remain subject to the disciplinary measures of their home Member State in the course of a return operation or return intervention.

*Article 31*

*Pool of return specialists*

1. The Agency shall constitute a pool of return specialists from national competent bodies and from the staff of the Agency, who have the skills and expertise required to carry out return-related activities and who have been trained in accordance with Article 36. Those specialists shall be made available to carry out specific tasks, such as identification of particular groups of third-country nationals, the acquisition of travel documents from third countries and facilitation of consular cooperation.

2. The management board, on a proposal of the executive director shall determine the profile and the number of return specialists to be made available to that pool. The same procedure shall apply with regard to any subsequent changes in the profile and overall numbers. Member States shall contribute to the pool by nominating specialists corresponding to the defined profile. Return specialists with specific expertise in child protection shall be included in the pool.
3. Member States' contribution of return specialists to return operations and interventions for the following year shall be planned on the basis of annual bilateral negotiations and agreements between the Agency and Member States. In accordance with those agreements, Member States shall make the return specialists available for deployment at the request of the Agency, unless they are faced with an exceptional situation substantially affecting the discharge of national tasks. Such a request shall be made at least 21 working days before the intended deployment, or five working days in case of a rapid return intervention.
4. The Agency shall make the return specialists available upon request to Member States participating in return operations and to take part in return interventions. It shall make available return specialists with specific expertise in child protection for any return operation involving children.
5. Return specialists shall remain subject to the disciplinary measures either of the Agency or of their home Member State in the course of a return operation or return intervention.

### *Article 32*

#### *European return intervention teams*

1. The Agency shall constitute, from the pools set out in Articles 29, 30 and 31, tailor-made European return intervention teams for deployment during return interventions.
2. Articles 21, 22 and 24 shall apply *mutatis mutandis* to the European return intervention teams.

### *Article 33*

#### *Return interventions*

1. In circumstances where a Member State is facing a burden when implementing the obligation to return third-country nationals who are the subject of return decisions issued by a Member State, the Agency shall, upon request of that Member State, provide the appropriate technical and operational assistance in the form of a return intervention. Such intervention may consist of the deployment of European return intervention teams to the host Member State and the organisation of return operations from the host Member State.
2. In circumstances where a Member State is facing specific and disproportionate challenges when implementing its obligation to return third-country nationals who are the subject of return decisions issued by a Member State, the Agency shall, upon the request of that Member State, provide the appropriate technical and operational assistance in the form of a rapid return intervention. The Agency may propose on its own initiative to provide that Member State with such technical and operational assistance. A rapid return intervention may consist in the rapid deployment of European return intervention teams to the host Member State and the organisation of return operations from the host Member State.

3. 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 16 shall apply.
4. 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.
5. The Agency shall finance or co-finance return interventions from its budget in accordance with the financial rules applicable to the Agency.

## **Chapter III**

### **General provisions**

#### **SECTION 1**

#### **GENERAL RULES**

##### *Article 34*

##### *Protection of fundamental rights and a fundamental rights strategy*

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

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

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

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

4. In performing its tasks, in its relations with Member States and in its cooperation with third countries, the Agency shall take into account the reports of the consultative forum referred to in Article 70 ('the consultative forum') and the fundamental rights officer.



*Article 35*  
*Codes of conduct*

1. The Agency shall, in cooperation with the consultative forum, draw up and further develop a code of conduct applicable to all border control operations coordinated by the Agency and all persons participating in the activities of the Agency. The code of conduct shall lay down procedures intended to guarantee the principles of the rule of law and respect for fundamental rights with particular focus on vulnerable persons, including children, unaccompanied minors and other persons in a vulnerable situation, as well as on persons seeking international protection.
2. The Agency shall, in cooperation with the consultative forum, draw up and further develop a code of conduct for the return of returnees, which shall apply during all return operations and return interventions coordinated or organised by the Agency. That code of conduct shall describe common standardised procedures to simplify the organisation of return operations and return interventions, and assure return in a humane manner and with full respect for fundamental rights, in particular the principles of human dignity, the prohibition of torture and of inhuman or degrading treatment or punishment, the right to liberty and security and the right to the protection of personal data and non-discrimination.
3. The code of conduct for return shall in particular pay attention to the obligation of Member States to provide for an effective forced-return monitoring system as set out in Article 8(6) of Directive 2008/115/EC and to the fundamental rights strategy.

*Article 36*  
*Training*

1. The Agency shall, in cooperation with the appropriate training entities of the Member States, and, where appropriate, EASO and the European Union Agency for Fundamental Rights, develop specific training tools, including specific training in the protection of children and other persons in a vulnerable situation. It shall provide border guards and other relevant staff who are members of the European Border and Coast Guard teams with advanced training relevant to their tasks and powers. Experts from the staff of the Agency shall conduct regular exercises with those border guards in accordance with the advanced training and exercise schedule referred to in the annual work programme of the Agency.
2. The Agency shall take the necessary initiatives to ensure that all border guards and other relevant staff of the Member States who participate in the European Border and Coast Guard teams, as well as the staff of the Agency, have received training in relevant Union and international law, including on fundamental rights, access to international protection and where appropriate search and rescue, prior to their participation in operational activities organised by the Agency.
3. The Agency shall finance 100 % of training for border guards to be included in the rapid reaction pool referred to in Article 20(5), for the purposes of their participation in this pool.

4. The Agency shall take the necessary initiatives to ensure training for staff involved in return-related tasks who are allocated to the pools referred to in Articles 29, 30 and 31. The Agency shall ensure that its staff and all staff who participate in return operations and in return interventions have received training in relevant Union and international law, including on fundamental rights and access to international protection, prior to their participation in operational activities organised by the Agency.
5. The Agency shall establish and further develop common core curricula for the training of border guards and provide training at European level for instructors of the national border guards of Member States, including with regard to fundamental rights, access to international protection and relevant maritime law. The common core curricula shall aim to promote the highest standards and best practices in the implementation of Union border management legislation. The Agency shall draw up the common core curricula after consulting the consultative forum and the fundamental rights officer. Member States shall integrate the common core curricula 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 the European Border and Coast Guard teams and staff participating in the European return intervention teams to acquire knowledge or specific know-how from experiences and good practices abroad by working with border guards and staff involved in return-related tasks in a Member State other than their own.

*Article 37*

*Research and innovation*

1. The Agency shall proactively monitor and contribute to research and innovation activities relevant for European integrated border management including the use of advanced surveillance technology. The Agency shall disseminate the results of that research to the European Parliament, to the Member States and to the Commission in accordance with Article 50. It may use those results as appropriate in joint operations, rapid border interventions, return operations and return interventions.
2. The Agency shall assist the Member States and the Commission in identifying key research themes. The Agency shall assist Member States and the Commission in drawing up and implementing the relevant Union framework programmes for research and innovation activities.

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

*Article 38*

*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, return operations, return interventions, migration management support team deployments or technical assistance projects in accordance with the financial rules applicable to the Agency.

2. The Agency may acquire technical equipment by decision of the executive director in consultation with the management board. Any acquisition or leasing of equipment entailing significant costs to the Agency shall be preceded by a thorough needs and cost/benefit analysis. Any such expenditure shall be provided for in the Agency's budget as adopted by the management board.
3. Where the Agency acquires or leases major technical equipment, the following conditions shall apply:
  - (a) in case of acquisition by the Agency or co-ownership, the Agency shall agree with one Member State that that Member State shall provide for the registration of the equipment in accordance with the applicable legislation of that Member State;
  - (b) in case of leasing, the equipment shall be registered in a Member State.
4. On the basis of a model agreement drawn up by the Agency and approved by the management board, the Member State of registration and the Agency shall agree on terms ensuring the interoperability of the equipment and governing the use of the equipment, including specific provisions on rapid deployment during rapid border interventions. In the case of co-owned assets, the terms shall also cover the periods of full availability of the assets for the Agency. 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 39(8).
5. The Member State of registration or the supplier of technical equipment shall provide the necessary experts and technical crew to operate the technical equipment in a legally sound and safe manner.

*Article 39*

*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 38(4).
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 38(4).
4. The Agency shall ensure the compatibility and interoperability of the equipment listed in the technical equipment pool.

To that end, it shall define technical standards to be met by equipment 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.

5. The executive director shall identify the minimum number of items of technical equipment required to meet the needs of the Agency, in particular as regards carrying out joint operations, migration management support team deployments, rapid border interventions, return operations and return interventions, in accordance with its work programme for the year in question.

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.

6. 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.

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

The equipment on this list shall be sent to the destination for deployment as soon as possible, and, in any event, no later than 10 days after the date on which the operational plan is agreed.



The Agency shall contribute to this pool with equipment at the Agency's disposal as referred to in Article 38(1).

8. 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.
9. 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 30 June each year.
10. If a rapid border intervention takes place, Article 17(11) will apply accordingly.

11. 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.
12. 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.
13. The Agency shall on an annual basis submit a report to the European Parliament on the number of items of technical equipment that each Member State has committed to the technical equipment pool in accordance with this Article. That report shall list the Member States that invoked the exceptional situation referred to in paragraph 8 in the previous year and include the reasons and information provided by the Member State concerned.

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>1</sup> or, where relevant, any other dedicated Union funding made available to the Member States in view of increasing the operational capacity of the Agency. That technical equipment shall form part of the minimum number of items of technical equipment for a given year.

The Member States shall make that technical equipment available for deployment to the Agency upon its request. In case of an operation referred to in Article 17 or in Article 19 of this Regulation, they may not invoke the exceptional situation referred to in paragraph 8 of this Article.

15. The Agency shall manage the records of the technical equipment pool as follows:
- (a) classification by type of equipment and by type of operation;
  - (b) classification by owner (Member State, agency, other);
  - (c) overall numbers of items of equipment required;
  - (d) crew requirements if applicable;

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<sup>1</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).

- (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.
16. The Agency shall finance at 100 % the deployment of technical equipment which forms part of the minimum number of items of technical equipment provided by a given Member State for a given year. The deployment of technical equipment which does not form part of the minimum number of items of technical equipment shall be co-financed by the Agency up to a maximum of 100 % of the eligible expenses, taking into account the particular circumstances of the Member States deploying such technical equipment.

*Article 40*

*Tasks and powers of the members of the teams*

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

4. Members of the teams shall wear, where appropriate, their own uniform while performing their tasks and exercising their powers. They shall also wear visible personal identification and a blue armband with the 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.
5. While performing their tasks and exercising their powers, members of the teams may carry service weapons, ammunition and equipment as authorised in accordance with the home Member State's national law. However, the host Member State may prohibit the carrying of certain service weapons, ammunition and equipment, provided that its own legislation applies the same prohibition to its own border guards or staff involved in return-related tasks. The host Member State shall, in advance of the deployment of the members of the teams, inform the Agency of the permissible service weapons, ammunition and equipment and of the conditions for their use. The Agency shall make this information available to Member States.
6. While performing their tasks and exercising their powers, members of the teams shall be authorised to use force, including service weapons, ammunition and equipment, with the consent of the home Member State and the host Member State, in the presence of border guards of the host Member State and in accordance with the national law of the host Member State. The host Member State may, with the consent of the home Member State, authorise members of the teams to use force in the absence of border guards of the host Member State.

7. Service weapons, ammunition and equipment may be used in legitimate self-defence and in legitimate defence of members of the teams or of other persons in accordance with the national law of the host Member State.
8. For the purpose of this Regulation, the host Member State shall authorise members of the teams to consult European databases the consultation of which is necessary for fulfilling operational aims specified in the operational plan on border checks, border surveillance and return. The host Member State may also authorise them to consult its national databases where necessary for the same purpose. Member States shall ensure that they provide such database access in an efficient and effective manner. The members of the teams shall consult only those data which are required for performing their tasks and exercising their powers. The host Member State shall, in advance of the deployment of the members of the teams, inform the Agency of the national and European databases which may be consulted. The Agency shall make this information available to all Member States participating in the deployment.

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

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

*Article 41*  
*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 40. 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 42*  
*Civil liability*

1. Where members of the teams are operating in a host Member State, that Member State shall be liable in accordance with its national law for any damage caused by them during their operations.

2. Where such damage is caused by gross negligence or wilful misconduct, the host Member State may approach the home Member State in order to have any sums it has paid to the victims or persons entitled on their behalf reimbursed by the home Member State.
3. Without prejudice to the exercise of its rights vis-à-vis third parties, each Member State shall waive all its claims against the host Member State or any other Member State for any damage it has sustained, except in cases of gross negligence or wilful misconduct.
4. Any dispute between Member States relating to the application of paragraphs 2 and 3 of this Article which cannot be resolved by negotiations between them shall be submitted by them to the Court of Justice of the European Union in accordance with Article 273 TFEU.
5. Without prejudice to the exercise of its rights vis-à-vis third parties, the Agency shall meet costs related to damage caused to the Agency's equipment during deployment, except in cases of gross negligence or wilful misconduct.

#### *Article 43*

#### *Criminal liability*

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



## SECTION 2

### INFORMATION EXCHANGE AND DATA PROTECTION

#### *Article 44*

##### *Information exchange systems*

1. The Agency may take all necessary measures to facilitate the exchange of information relevant to its tasks with the Commission and the Member States and, where appropriate, the relevant Union agencies. It shall develop and operate an information system capable of exchanging classified information with those actors, and of exchanging personal data referred to in Articles 45, 47, 48 and 49 of this Regulation in accordance with Council Decision 2013/488/EU<sup>1</sup> and Commission Decision (EU, Euratom) 2015/444<sup>2</sup>.
2. The Agency may take all necessary measures to facilitate the exchange of information relevant for its tasks with Ireland and the United Kingdom if it relates to the activities in which they participate in accordance with Article 51 and Article 62(5).

#### *Article 45*

##### *Data protection*

1. The Agency shall apply Regulation (EC) No 45/2001 when processing personal data.

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<sup>1</sup> Council Decision 2013/488/EU of 23 September 2013 on the security rules for protecting EU classified information (OJ L 274, 15.10.2013, p. 1).

<sup>2</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).

2. The management board shall establish measures for the application of Regulation (EC) No 45/2001 by the Agency, including those concerning the data protection officer of the Agency. Those measures shall be established after consultation of the European Data Protection Supervisor.
3. Without prejudice to Articles 47, 48 and 49, the Agency may process personal data for administrative purposes.
4. Without prejudice to Article 48, the transfer of personal data processed by the Agency and the onward transfer by Member States to authorities of third countries or third parties, including international organisations, of personal data processed in the framework of this Regulation, shall be prohibited.

#### *Article 46*

##### *Purposes of processing personal data*

1. The Agency may process personal data only for the following purposes:
  - (a) performing its tasks of organising and coordinating joint operations, pilot projects, rapid border interventions and in the framework of the migration management support teams in accordance with Article 47;
  - (b) performing its tasks of organising and coordinating return operations and return interventions in accordance with Article 48;
  - (c) facilitating the exchange of information with Member States, EASO, Europol or Eurojust in accordance with Article 47;

- (d) risk analysis by the Agency in accordance with Article 11;
  - (e) identifying and tracking vessels in the framework of EUROSUR in accordance with Article 49;
  - (f) administrative tasks.
2. Any processing of personal data as referred to in paragraph 1 shall respect the principle of proportionality and be strictly limited to personal data necessary for the purposes referred to in that paragraph.
  3. A Member State or other Union agency providing personal data to the Agency shall determine the purpose or the purposes for which it shall be processed as referred to in paragraph 1. The Agency may process such personal data for a different purpose which also falls under paragraph 1 only if authorised by the data provider of the information.
  4. Member States and other Union agencies may indicate, at the moment of transferring personal data, any 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, they shall inform the Agency accordingly. The Agency shall comply with such restrictions.

*Article 47*

*Processing of personal data collected*

*during joint operations, pilot projects and rapid border interventions  
and by migration management support teams*

1. The Agency shall only process the following categories of personal data collected and transmitted to it by the Member States or by its own staff in the context of joint operations, pilot projects and rapid border interventions, and by migration management support teams:
  - (a) personal data regarding persons who are suspected, on reasonable grounds, by the competent authorities of the Member States, of involvement in cross-border crime, such as migrant smuggling, trafficking in human beings or terrorism;
  - (b) personal data regarding persons who cross the external borders without authorisation and whose data is collected by the European Border and Coast Guard teams, including when acting in the framework of the migration management support teams;
  - (c) license plate numbers, vehicle identification numbers, telephone numbers or ship identification numbers which are linked to the persons referred to in (a) and (b), and which are necessary for investigating and analysing routes and methods used for illegal immigration and cross-border crime.
  
2. Personal data referred to in paragraph 1 may be processed by the Agency in the following cases:
  - (a) where transmission to EASO, Europol or Eurojust is necessary for use in accordance with their respective mandates and in accordance with Article 52;

- (b) where transmission to the authorities of the relevant Member States which are responsible for border control, migration, asylum or law enforcement is necessary for use in accordance with national legislation and Union and national data protection rules;
- (c) where necessary for the preparation of risk analyses.

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

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

#### *Article 48*

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

- 1. In performing its tasks of organising and coordinating the return operations and conducting return interventions, the Agency may process personal data of returnees.
- 2. The personal data processed by the Agency shall be strictly limited to those personal data which are required for the purposes of the return operation or the return intervention.

3. The personal data shall be deleted as soon as the purpose for which they have been collected has been achieved and no later than 30 days after the end of the return operation or the return intervention.
4. Where the personal data of returnees are not transmitted to the carrier by a Member State, the Agency may transfer such data.

#### *Article 49*

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

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

#### *Article 50*

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

1. The Agency shall apply the Commission's rules on security as set out in Decision (EU, Euratom) 2015/444. Those rules shall apply, *inter alia*, to the exchange, processing and storage of classified information.
2. The Agency shall apply the security principles relating to the processing of non-classified sensitive information as set out in the Decision (EU, Euratom) 2015/444 and as implemented by the Commission. The management board shall establish measures for the application of those security principles.

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 the Commission.

### **SECTION 3**

#### **COOPERATION BY THE AGENCY**

##### *Article 51*

##### *Cooperation with Ireland and the United Kingdom*

1. The Agency shall facilitate operational cooperation of the Member States with Ireland and the United Kingdom in specific activities.
2. Support to be provided by the Agency pursuant to points (l), (n) and (o) of Article 8(1) shall cover the organisation of return operations of Member States in which Ireland or the United Kingdom, or both, also participate.
3. The application of this Regulation to the borders of Gibraltar shall be suspended until the date on which an agreement is reached on the scope of the measures concerning the crossing by persons of the external borders.

*Article 52*

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

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

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

2. Cooperation referred to in paragraph 1 shall take place within the framework of working arrangements concluded with the entities referred to in paragraph 1. Such arrangements shall have received the Commission's prior approval. In every case, the Agency shall inform the European Parliament of any such arrangements.

3. The Agency shall cooperate with the Commission and, where relevant, with Member States in activities under this Regulation. 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 and of the Member States.



4. The Union institutions, bodies, offices, agencies and international organisations referred to in paragraph 1, shall use information received from the Agency only within the limits of their competences and insofar as they respect fundamental rights, including data protection requirements. Onward transmission or other communication of personal data processed by the Agency to other Union institutions, bodies, offices and agencies shall be subject to specific working arrangements regarding the exchange of personal data and subject to the prior approval of the European Data Protection Supervisor. Any transfer of personal data by the Agency shall be in line with the data protection provisions laid down in Articles 45 to 49. As regards the handling of classified information, those arrangements shall provide that the Union institution, body, office, agency or international organisation concerned shall comply with security rules and standards equivalent to those applied by the Agency.
5. The Agency may, with the agreement of the Member States concerned, invite observers of Union institutions, bodies, offices, agencies or international organisations to participate in its activities, in particular joint operations and pilot projects, risk analysis and training, to the extent that their presence is in accordance with the objectives of those activities, may contribute to the improvement of cooperation and the exchange of best practices, and does not affect the overall safety and security of those activities. The participation of those observers in risk analysis and training may take place only with the agreement of the Member States concerned. As regards joint operations and pilot projects, the participation of observers 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.

*Article 53*

*European cooperation on coast guard functions*

1. The Agency shall, in cooperation with the European Fisheries Control Agency and the European Maritime Safety Agency, support national authorities carrying out coast guard functions at national and Union level and, where appropriate, at international level by:
  - (a) sharing, fusing and analysing information available in ship reporting systems and other information systems hosted by or accessible to those agencies, in accordance with their respective legal bases and without prejudice to the ownership of data by Member States;
  - (b) providing surveillance and communication services based on state-of-the-art technology, including space-based and ground infrastructure and sensors mounted on any kind of platform;
  - (c) building capacity by drawing up guidelines and recommendations and by establishing best practices as well as by providing training and exchange of staff;
  - (d) enhancing the exchange of information and cooperation on coast guard functions including by analysing operational challenges and emerging risks in the maritime domain;
  - (e) sharing capacity by planning and implementing multipurpose operations and by sharing assets and other capabilities, to the extent that these activities are coordinated by those agencies and are agreed to by the competent authorities of the Member States concerned.

2. The precise forms of cooperation on coast guard functions between the Agency, the European Fisheries Control Agency and the European Maritime Safety Agency shall be determined in a working arrangement, in accordance with their respective mandates and the financial rules applicable to those agencies. Such an arrangement shall be approved by the management board of the Agency and the administrative boards of the European Maritime Safety Agency and the European Fisheries Control Agency.
3. The Commission shall, in close cooperation with the Member States, the Agency, the European Maritime Safety Agency and the European Fisheries Control Agency, make available a practical handbook on European cooperation on coast guard functions. That handbook shall contain guidelines, recommendations and best practices for the exchange of information. The Commission shall adopt the handbook in the form of a recommendation.

#### *Article 54*

#### *Cooperation with third countries*

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

2. The Agency may cooperate with the authorities of third countries competent in matters covered by this Regulation with the support of, and in coordination with, Union delegations. When doing so, it shall act within the framework of the external relations policy of the Union, including with regard to the protection of fundamental rights and the principle of *non-refoulement*. It shall also act within the framework of working arrangements concluded with those authorities in accordance with Union law and policy. Those working arrangements shall specify the scope, nature and purpose of the cooperation and be related to the management of operational cooperation. The draft arrangements shall have received the Commission's prior approval. The Agency shall inform the European Parliament before a working arrangement is concluded. The Agency shall comply with Union law, including norms and standards which form part of the Union *acquis*.
  
3. In circumstances requiring increased technical and operational assistance, the Agency may coordinate operational cooperation between Member States and third countries with respect to management of the external borders. The Agency shall have the possibility of carrying out actions at the external borders involving one or more Member States and a third country neighbouring at least one of those Member States, subject to the agreement of that neighbouring third country, including on the territory of that third country. Operations shall be carried out on the basis of an operational plan that has the agreement of the Member State or Member States bordering the operational area. The participation of Member States in joint operations on the territory of third countries shall be on voluntary basis. The Commission shall be informed of such activities.

4. In cases where it is envisaged that teams will be deployed to a third country in actions where the team members will have executive powers, or where other actions in third countries require it, a status agreement shall be concluded by the Union with the third country concerned. The status agreement shall cover all aspects that are necessary for carrying out the actions. It shall in particular set out the scope of the operation, civil and criminal liability and the tasks and powers of the members of the teams. The status agreement shall ensure the full respect of fundamental rights during these operations.
5. The Commission shall draw up a model status agreement for actions on the territory of third countries.
6. The Agency shall cooperate with the competent authorities of third countries on return, including on the acquisition of travel documents.
7. 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 14, return operations referred to in Article 28, return interventions referred to in Article 33 and training referred to in Article 36, to the extent that their presence is in accordance with the objectives of those activities, may contribute to improving cooperation and the exchange of best practices, and does not affect the overall safety of those activities. The participation of those observers may take place only with the agreement of the Member States concerned regarding the activities referred to in Articles 14, 19, 28 and 36 and only with the agreement of the host Member State regarding those referred to in Articles 14 and 33. 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.

8. The Agency shall participate in the implementation of international agreements concluded by the Union with third countries within the framework of the external relations policy of the Union and regarding matters covered by this Regulation.
9. The Agency may benefit from Union funding in accordance with the provisions of the relevant instruments supporting the external relations policy of the Union. It may launch and finance technical assistance projects in third countries regarding matters covered by this Regulation.
10. When concluding bilateral agreements with third countries, Member States may, in agreement with the Agency, include provisions concerning the role and competence of the Agency in accordance with this Regulation, in particular regarding the exercise of executive powers by members of the European Border and Coast Guard teams deployed by the Agency during the joint operations, pilot projects, rapid border interventions, return operations or return interventions. The Member States shall notify the Commission of any such provisions.
11. The Agency shall inform the European Parliament of activities conducted pursuant to this Article. It shall include an assessment of the cooperation with third countries in its annual reports.

*Article 55*

*Liaison officers in third countries*

1. The Agency may deploy experts from its own staff as liaison officers, who should enjoy the highest possible protection when carrying out their duties in third countries. They shall form part of the local or regional cooperation networks of immigration liaison officers and security experts of the Union and of the Member States, including the network set up pursuant to Council Regulation (EC) No 377/2004<sup>1</sup>. Liaison officers shall only be deployed to third countries in which border management practices comply with minimum human rights standards.
2. Within the framework of the external relations 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.
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. Those liaison officers shall coordinate closely with Union delegations.

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

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

## **SECTION 4**

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

#### *Article 56*

##### *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, subject to the implementation of Article 57.



*Article 57*

*Headquarters agreement*

1. The necessary arrangements concerning the accommodation to be provided for the Agency in the Member State in which the Agency has its seat and the facilities to be made available by that Member State, as well as the specific rules applicable to the executive director, the deputy executive director, the members of the management board, the staff of the Agency and members of their families in that Member State shall be laid down in a headquarters agreement between the Agency and the Member State in which the Agency has its seat.
2. The headquarters agreement shall be concluded after obtaining the approval of the management board and no later than [six months after entry into force of this Regulation].
3. The Member State in which the Agency has its seat shall provide the best possible conditions to ensure the proper functioning of the Agency, including multilingual, European-oriented schooling and appropriate transport connections.

*Article 58*

*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>1</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 Agency's staff.
2. For the purpose of implementing Articles 12, 22 and Article 32(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 20(11), only seconded border guards or other relevant staff may be designated for secondment to the European Border and Coast Guard teams. The Agency shall designate those national experts who are to be seconded to the European Border and Coast Guard teams in accordance with that Article.
3. The management board shall adopt the necessary implementing measures in agreement with the Commission pursuant to Article 110 of the Staff Regulations.
4. The management board may adopt provisions to allow border guards or other relevant staff from Member States to be seconded to the Agency. Those provisions shall take into account the requirements of Article 20(11), in particular the fact that the seconded border guards or other relevant staff are considered to be members of the teams and have the tasks and powers provided for in Article 40. They shall include provisions on the conditions of deployment.

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<sup>1</sup> OJ L 56, 4.3.1968, p. 1.

*Article 59*  
*Privileges and immunities*

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

*Article 60*  
*Liability*

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

*Article 61*

*Administrative and management structure of the Agency*

The administrative and management structure of the Agency shall comprise:

- (a) a management board;
- (b) an executive director;
- (c) a consultative forum; and
- (d) a fundamental rights officer.

*Article 62*

*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 69;
  - (b) appoint the deputy executive director on the proposal of the executive director in accordance with Article 69;

- (c) adopt decisions on conducting the vulnerability assessment in accordance with Article 13(1) and (8), with the decisions setting out measures adopted under Article 13(8) being passed by a two-thirds majority of the members with a right to vote;
- (d) adopt decisions on the establishment of a common integrated risk analysis model in accordance with Article 11(1);
- (e) adopt decisions on the nature and terms of the deployment of liaison officers in Member States in accordance with Article 12(2);
- (f) adopt a technical and operational strategy for the European integrated border management in accordance with Article 3(2);
- (g) adopt a decision on the profiles and the overall number of border guards or other relevant staff to be made available for the European Border and Coast Guard teams, in accordance with Article 20(2);
- (h) adopt a decision on the profiles and the minimum number of border guards or other relevant staff that correspond to these profiles to be made available for the rapid reaction pool of European Border and Coast Guard teams, in accordance with Article 20(4) and by a three-quarters majority of the members with a right to vote;
- (i) 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;

- (j) before 30 November each year, and after 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 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;
- (k) establish procedures for the executive director to take decisions relating to the technical and operational tasks of the Agency;
- (l) 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;
- (m) exercise disciplinary authority over the executive director and over the deputy executive director, in agreement with the executive director;
- (n) establish its rules of procedure;
- (o) establish the organisational structure of the Agency and adopt the Agency's staff policy;
- (p) adopt an anti-fraud strategy, proportionate to the risk of fraud, taking into account the costs and benefits of the measures to be implemented;
- (q) adopt internal rules for the prevention and management of conflicts of interest in respect of its members;

- (r) 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');
- (s) adopt appropriate implementing rules for giving effect to the Staff Regulations and the Conditions of Employment in accordance with Article 110 of the Staff Regulations;
- (t) 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;
- (u) adopt and regularly update the communication and dissemination plans referred to in the second subparagraph of Article 8(3);
- (v) 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;
- (w) 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;
- (x) decide on enhanced assessment and monitoring of a Member State as referred to in Article 13(2);
- (y) appoint the fundamental rights officer in accordance with Article 71(1);

(z) approve the working arrangements with third countries.

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

3. Proposals for decisions of the management board as referred to in paragraph 2 on specific activities of the Agency to be carried out at, or in the immediate vicinity of, the external borders of any particular Member State shall require a vote in favour of their adoption by the Member of the management board representing that Member State.
4. The management board may advise the executive director on any matter related to the development of operational management of the external borders and return, including activities related to research.
5. Should Ireland and/or the United Kingdom request to participate in specific activities, the management board shall decide thereon.

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

6. The management board shall forward annually to the European Parliament and the Council ('the budgetary authority') any information relevant to the outcome of the evaluation procedures conducted by the Agency.



7. The management board may establish a small-sized executive board, to assist it and the executive director with regard to the preparation of the decisions, programmes and activities to be adopted by the management board and 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 63*

*Composition of the management board*

1. Without prejudice to paragraph 3, the management board shall be composed of one representative of each Member State and two representatives of the Commission, all with a right to vote. To this effect, each Member State shall appoint a member of the management board as well as an alternate who will represent the member in his or her absence. The Commission shall appoint two members and their alternates. The duration of the terms of office shall be four years. The terms of office shall be extendable.
2. The management board members shall be appointed on the basis of their degree of high level relevant experience and expertise in the field of operational cooperation on border management and return and their relevant managerial, administrative and budgetary skills. Member States and the Commission shall aim to achieve a gender balanced representation on the management board.
3. Countries associated with the implementation, application and development of the Schengen *acquis* shall participate in the Agency. They shall have one representative and one alternate each on the management board. The arrangements developed under the relevant provisions of their association agreements, that specify the nature and extent of, and the detailed rules for, the participation by those countries in the work of the Agency, including provisions on financial contributions and staff, shall apply.

*Article 64*

*Multiannual programming and annual work programmes*

1. The management board shall, by 30 November each year, adopt a programming document containing the Agency's multiannual programming and annual programming for the following year, based on a draft put forward by the executive director, taking into account the opinion of the Commission and, as regards the multiannual programming, after having consulted the European Parliament. The management board shall forward the document to the European Parliament, to the Council and to the Commission.
2. The document referred to in paragraph 1 shall become definitive after the final adoption of the general budget. It shall be adjusted accordingly where necessary.
3. The multiannual programming shall set out overall strategic programming in the medium and long term, including objectives, expected results, performance indicators and resource planning, including the multiannual budget and staff. The multiannual programming shall set out the strategic areas of intervention and explain what needs to be done to achieve the objectives. It shall include a strategy for relations with third countries and international organisations as well as the actions linked to that strategy.
4. The multiannual programming shall be implemented by means of annual work programmes and shall, where appropriate, be updated following the outcome of an evaluation conducted pursuant to in Article 81. 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 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 65*

*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 66*

*Meetings*

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.
4. Ireland and the United Kingdom shall be invited to attend the meetings of the management board.

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

*Article 67*

*Voting*

1. Without prejudice to Articles 20(4), points (c), (j) and (l) of Article 62(2), Article 65(1) and Article 69(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 68*

*Functions and powers of the executive director*

1. The Agency shall be managed by its executive director, who shall be completely independent in the performance of his or her duties. Without prejudice to the respective competencies of the Union institutions and the management board, the executive director shall neither seek nor take instructions from any government or from any other body.
2. The European Parliament or the Council may invite the executive director to report on the carrying out of his or her tasks. This includes reporting on the implementation and monitoring of the fundamental rights strategy, the annual activity report of the Agency for the previous year, the work programme for the following year and the Agency's multiannual programming or any other matter related to the activities of the Agency. The executive director shall also make a statement before the European Parliament, if requested and report to it regularly.

3. The executive director shall be responsible for the preparation and implementation of the strategic decisions taken by the management board and for the taking of decisions related to the operational activities of the Agency in accordance with this Regulation. The executive director shall have the following functions and powers:
- (a) to propose, prepare and implement the strategic decisions and programmes and activities adopted by the management board within the limits set out in this Regulation, its implementing rules and any applicable law;
  - (b) to take all necessary steps, including the adoption of internal administrative instructions and the publication of notices, to ensure the day-to-day administration and functioning of the Agency in accordance with this Regulation;
  - (c) to prepare each year the programming document and to submit it to the management board after consulting the Commission;
  - (d) to prepare each year the annual activity report on the Agency's activities and submit it to the management board;
  - (e) to draw up a draft statement of estimates of the revenues and expenditure of the Agency pursuant to Article 75, and implement the budget pursuant to Article 76;
  - (f) to delegate his or her powers to other members of the Agency's staff subject to rules to be adopted in accordance with the procedure referred to in Article 62(2)(n);
  - (g) to adopt a recommendation on measures in accordance with Article 13(6), including decisions proposing that Member States initiate and carry out joint operations, rapid border interventions or other action referred to in Article 14(2);



- (h) to evaluate, approve and coordinate proposals made by Member States for joint operations or rapid border interventions in accordance with Article 15(3);
- (i) to evaluate, approve and coordinate requests made by Member States for joint return operations and return interventions in accordance with Articles 28 and 33;
- (j) to ensure the implementation of the operational plans referred to in Articles 16, 17 and Article 33(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 18(2);
- (l) to ensure the implementation of the Council decision referred to in Article 19(1);
- (m) to withdraw financing of activities in accordance with Article 25;
- (n) to evaluate the results of activities in accordance with Article 26;
- (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 39(5);
- (p) 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;

- (q) 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;
  - (r) to prepare an anti-fraud strategy for the Agency and present it to the management board for approval.
4. The executive director shall be accountable for his or her activities to the management board.
  5. The executive director shall be the legal representative of the Agency.

*Article 69*

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

1. The Commission shall propose at least three candidates for the post of executive director based on a list following publication of the post in the *Official Journal of the European Union* and, 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. 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 a deputy executive director. If the executive director is absent or indisposed, the deputy executive director shall take his or her place.
4. The deputy executive director shall be appointed by the management board on the proposal of the executive director. The deputy executive director shall be appointed 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. The executive director shall propose at least three candidates for the post of deputy executive director. The management board shall take its decision by a two-thirds majority of all members with a right to vote.

The management board shall have the power to dismiss the deputy executive director 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 director shall be five years. It may be extended by the management board once, for another period of up to five years.

#### *Article 70*

#### *Consultative forum*

1. A consultative forum shall be established by the Agency to assist the executive director and the management board with independent advice in fundamental rights matters.
2. The Agency shall invite EASO, the European Union Agency for Fundamental Rights, the United Nations High Commissioner for Refugees and other relevant organisations to participate in the consultative forum. On a proposal by the executive director, the management board shall decide on the composition of the consultative forum and the terms of the transmission of information to the consultative forum. The consultative forum shall, after consulting the management board and the executive director, define its working methods and set up its work programme.

3. The consultative forum shall be consulted on the further development and implementation of the fundamental rights strategy, on the establishment of the complaints mechanism, on codes of conduct and on common core curricula.
4. The consultative forum shall prepare an annual report of its activities. That report shall be made publicly available.
5. Without prejudice to the tasks of the fundamental rights officer, the consultative forum shall have effective access to all information concerning the respect for fundamental rights, including by carrying out on-the-spot visits to joint operations or rapid border interventions subject to the agreement of the host Member State, and to hotspot areas, return operations and return interventions.

*Article 71*

*Fundamental rights officer*

1. A fundamental rights officer shall be appointed by the management board. He or she shall have the tasks of contributing to the Agency's fundamental rights strategy, of monitoring its compliance with fundamental rights and of promoting its respect of fundamental rights. The fundamental rights officer shall have the necessary qualifications and experience in the field of fundamental rights.
2. The fundamental rights officer shall be independent in the performance of his or her duties. He or she shall report directly to the management board and cooperate with the consultative forum. The fundamental rights officer shall so report on a regular basis and as such contribute to the mechanism for monitoring fundamental rights.

3. The fundamental rights officer shall be consulted on the operational plans drawn up in accordance with Articles 16, 17 and 28 and Article 33(4). He or she shall have access to all information concerning respect for fundamental rights in all the activities of the Agency.

#### *Article 72*

#### *Complaints mechanism*

1. The Agency shall, in cooperation with the fundamental rights officer, take the necessary measures to set up a complaints mechanism in accordance with this Article to monitor and ensure the respect for fundamental rights in all the activities of the Agency.
2. Any person who is directly affected by the actions of staff involved in a joint operation, pilot project, rapid border intervention, migration management support team deployment, return operation or return intervention and who considers him or herself to have been the subject of a breach of his or her fundamental rights due to those actions, or any party representing such a person, may submit a complaint in writing to the Agency.
3. Only substantiated complaints involving concrete fundamental rights violations shall be admissible.
4. The fundamental rights officer shall be responsible for handling complaints received by the Agency in accordance with the right to good administration. For this purpose, the fundamental rights officer shall review the admissibility of a complaint, register admissible complaints, forward all registered complaints to the Executive Director, forward complaints concerning members of the teams to the home Member State, inform the relevant authority or body competent for fundamental rights in a Member State, and register and ensure the follow-up by the Agency or that Member State.

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

Any decision shall be in written form and reasoned.

6. In the case of a registered complaint concerning a staff member of the Agency, the executive director shall ensure appropriate follow-up, in consultation with the fundamental rights officer, including disciplinary measures as necessary. The executive director shall report back within a determined timeframe to the fundamental rights officer as to the findings and follow-up made by the Agency in response to a complaint, including disciplinary measures as necessary.

If a complaint is related to data protection issues, the executive director shall involve the data protection officer of the Agency. The fundamental rights officer and the data protection officer shall establish, in writing, a memorandum of understanding specifying their division of tasks and cooperation as regards complaints received.

7. If a complaint is registered that concerns a border guard of a host Member State or a member of the teams, including a seconded member of the teams or seconded national expert, the home Member State shall ensure appropriate follow-up, including disciplinary measures as necessary or other measures in accordance with national law. The relevant Member State shall report back to the fundamental rights officer as to the findings and follow-up made in response to the complaint within a determined time period, and if necessary, at regular intervals thereafter. The Agency shall follow-up the matter if no report is received from the relevant Member State.
8. Where a border guard or a seconded national expert is found to have violated fundamental rights or international protection obligations, the Agency may request that the Member State remove that border guard or seconded national expert immediately from the activity of the Agency or the rapid reaction pool.
9. The fundamental rights officer shall report to the executive director and to the management board as to the Agency's and Member States' findings and follow-up made in response to complaints. The Agency shall include information on the complaints mechanism in its annual report.
10. The fundamental rights officer shall, in accordance with the provisions set out in paragraphs (1) to (9) and after consulting the consultative forum, draw up a standardised complaint form requiring detailed and specific information concerning the alleged breach of fundamental rights. The fundamental rights officer shall also draw up any further detailed rules as necessary. The fundamental rights officer shall submit that form and such further detailed rules to the executive director and to the management board.



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

11. Any personal data contained in a complaint shall be handled and processed by the Agency including the fundamental rights officer in accordance with Regulation (EC) No 45/2001 and by Member States in accordance with Directive 95/46/EC and Framework Decision 2008/977/JHA.

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

In order to safeguard the interests of the complainants, complaints shall be dealt with confidentially by the fundamental rights officer in accordance with national and Union law unless the complainant explicitly waives his or her right to confidentiality. When complainants waive their right to confidentiality, it shall be understood that they consent to the fundamental rights officer or the Agency disclosing their identity to the competent authorities or bodies in relation to the matter under complaint, where necessary.

### *Article 73*

#### *Language arrangements*

1. The provisions laid down in Regulation No 1<sup>1</sup> shall apply to the Agency.
2. Without prejudice to decisions taken on the basis of Article 342 TFEU, the annual activity report and the work programme referred to in points (i) and (j) of Article 62(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 74*

#### *Transparency and communication*

1. The Agency shall be subject to Regulation (EC) No 1049/2001 when handling applications for access to documents held by it.
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 (i) of Article 62(2) and ensure, without prejudice to Article 50, in particular that the public and any interested party are rapidly given objective, comprehensive, reliable and easily understandable information with regard to its work. It shall do so without revealing operational information which, if made public, would jeopardise attainment of the objective of operations.

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<sup>1</sup> Regulation No 1 of 15 April 1958 determining the languages to be used by the European Economic Community (OJ 17, 6.10.1958, p. 385).

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 75*

#### *Budget*

1. The revenue of the Agency shall consist, without prejudice to other types of income, of:
  - (a) a subsidy from the Union entered in the general budget of the European Union (Commission section);
  - (b) a contribution from the countries associated with the implementation, application and development of the Schengen *acquis*, as established in the respective arrangements that specify their financial contribution;

- (c) Union funding in the form of delegation agreements or ad-hoc grants in accordance with the Agency's financial rules referred to in Article 79 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, together with 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 subsidy to be charged to the general budget, which it shall place before the budgetary authority in accordance with Articles 313 and 314 TFEU.
9. The budgetary authority shall authorise appropriations for the subsidy to the Agency.  
  
The budgetary authority shall adopt the establishment plan for the Agency.
10. The management board adopts the Agency's budget. It shall become final following final adoption of the general budget of the European Union. Where appropriate, it shall be adjusted accordingly.
11. Any modification to the budget, including the establishment plan, shall follow the same procedure.
12. For any building project likely to have significant implications for the budget of the Agency, the provisions of Commission Delegated Regulation (EU) No 1271/2013<sup>1</sup> shall apply.

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<sup>1</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).

13. 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 4 % of the allocation foreseen for the operational activities. On 1 October each year, at least one-quarter of the reserve should remain available in order to cover needs arising until the end of the year.

*Article 76*

*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<sup>1</sup>.
3. The Agency shall send a report on the budgetary and financial management for year N to the European Parliament, the Council and the Court of Auditors by 31 March of year N + 1.

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

4. The Commission's accounting officer shall send the Agency's provisional accounts for year N, consolidated with the Commission's accounts, to the Court of Auditors by 31 March of year N + 1.
5. On receipt of the Court of Auditors' observations on the Agency's provisional accounts for year N, pursuant to Article 148 of Regulation (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 77*

*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 investigations, including on-the-spot checks and inspections, in accordance with the provisions and procedures laid down in Regulation (EU, Euratom) No 883/2013 and Council Regulation (Euratom, EC) No 2185/96<sup>1</sup> with a view to establishing whether there has been fraud, corruption or any other illegal activity affecting the financial interests of the Union in connection with a grant agreement or grant decision or a contract funded by the Agency.

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<sup>1</sup> Council Regulation (Euratom, EC) No 2185/96 of 11 November 1996 concerning on-the-spot checks and inspections carried out by the Commission in order to protect the European Communities' financial interests against fraud and other irregularities (OJ L 292, 15.11.1996, p. 2).



4. Without prejudice to paragraphs 1, 2 and 3, cooperation agreements 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 and OLAF to conduct such audits and investigations, in accordance with their respective competences.

*Article 78*

*Prevention of conflicts of interest*

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

*Article 79*

*Financial provision*

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

## Chapter IV

### Amendment

#### *Article 80*

#### *Amendment to Regulation (EU) 2016/399*

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

- ‘1. In exceptional circumstances, where the overall functioning of the area without internal border control is put at risk as a result of persistent serious deficiencies relating to external border control as referred to in Article 21 of this Regulation or as a result of the non-compliance of a Member State with a Council decision referred to in Article 19(1) of Regulation (EU) 2016/... of the European Parliament and of the Council<sup>+</sup>, and insofar as those circumstances constitute a serious threat to public policy or internal security within the area without internal border control or within parts thereof, border control at internal borders may be reintroduced in accordance with paragraph 2 of this Article for a period of up to six months. That period may be prolonged, no more than three times, for a further period of up to six months if the exceptional circumstances persist.

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\* Regulation (EU) 2016/... of the European Parliament and of the Council of ... on the European Border and Coast Guard and amending Regulation (EU) 2016/399 of the European Parliament and of the Council and repealing Regulation (EC) No 863/2007 of the European Parliament and of the Council, Council Regulation (EC) No 2007/2004 and Council Decision 2005/267/EC (OJ L ..., p. ...).’.

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<sup>+</sup> OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 29/16 (2015/0310(COD)) and insert the number, date and OJ reference of that Regulation in the footnote.

## **Chapter V**

### **Final provisions**

#### *Article 81*

#### *Evaluation*

1. By... [three years after the date of entry into force of this Regulation] and every four years thereafter, the Commission shall commission an independent external evaluation to assess in particular:
  - (a) the results achieved by the Agency having regard to its objectives, mandate 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) the implementation of European cooperation on coast guard functions;
  - (d) the possible need to modify the mandate of the Agency;
  - (e) the financial implications of any such modification.

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

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

## *Article 82*

### *Repeal*

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

## *Article 83*

### *Entry into force and applicability*

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

Article 20(5) and (6) and Article 39(7) shall apply from ... [two months after the entry into force of this Regulation]. Articles 29, 30, 31 and 32 shall apply from ... [three months after the entry into force of this Regulation].

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

Done at ...,

*For the European Parliament*  
*The President*

*For the Council*  
*The President*

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## ANNEX I

Table of contributions, to be provided by each Member State,  
to the minimum total number of 1 500 border guards and other relevant staff,  
in accordance with Article 20(5)

|                |     |
|----------------|-----|
| Belgium        | 30  |
| Bulgaria       | 40  |
| Czech Republic | 20  |
| Denmark        | 29  |
| Germany        | 225 |
| Estonia        | 18  |
| Greece         | 50  |
| Spain          | 111 |
| France         | 170 |
| Croatia        | 65  |
| Italy          | 125 |
| Cyprus         | 8   |
| Latvia         | 30  |
| Lithuania      | 39  |
| Luxembourg     | 8   |
| Hungary        | 65  |
| Malta          | 6   |
| Netherlands    | 50  |
| Austria        | 34  |

|               |      |
|---------------|------|
| Poland        | 100  |
| Portugal      | 47   |
| Romania       | 75   |
| Slovenia      | 35   |
| Slovakia      | 35   |
| Finland       | 30   |
| Sweden        | 17   |
| Switzerland   | 16   |
| Iceland       | 2    |
| Liechtenstein | *    |
| Norway        | 20   |
| Total         | 1500 |

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\* Liechtenstein will contribute through proportional financial support.

## ANNEX II

### Correlation Table

| Regulation (EC) No 2007/2004      | This Regulation                 |
|-----------------------------------|---------------------------------|
| -                                 | Article 1                       |
| Article 1(1)                      | -                               |
| Article 1(2), first subparagraph  | -                               |
| Article 1(2), second subparagraph | Articles 6(3), 34(1) and 34(4)  |
| Article 1(3)                      | -                               |
| Article 1a, introductory part     | Article 2, introductory part    |
| Article 1a, point (1)             | Article 2, point (1)            |
| -                                 | Article 2, points (2) and (3)   |
| Article 1a, point (1a)            | Article 2, point (4)            |
| Article 1a, point (2)             | Article 2, point (5)            |
| Article 1a, point (3)             | Article 2, point (6)            |
| -                                 | Article 2, point (7)            |
| Article 1a, point(4)              | Article 2, point (8)            |
| Article 1a, point (5)             | -                               |
| Article 1a, point (6)             | -                               |
| -                                 | Article 2, points (9) to (16)   |
| -                                 | Articles 3 to 5                 |
| -                                 | Article 6(1) and (2)            |
| -                                 | Article 7                       |
| Article 2(1), introductory part   | Article 8(1), introductory part |
| -                                 | Article 8(1)(a) to (c)          |
| Article 2(1)(a)                   | -                               |
| Article 2(1)(b)                   | Article 8(1)(p)                 |



| Regulation (EC) No 2007/2004                 | This Regulation          |
|----------------------------------------------|--------------------------|
| Article 2(1)(c)                              | -                        |
| Article 2(1)(d)                              | Article 8(1)(q)          |
| Article 2(1)(da)                             | Article 8(1)(d)          |
| Article 2(1)(e)                              | Article 8(1)(e)          |
| -                                            | Article 8(1)(f)          |
| Article 2(1)(ea)                             | Article 8(1)(g)          |
| -                                            | Article 8(1)(h) to (o)   |
| Article 2(1)(f)                              | -                        |
| Article 2(1)(g)                              | -                        |
| Article 2(1)(h)                              | Article 8(1)(r)          |
| Article 2(1)(i)                              | Article 8(1)(s)          |
| -                                            | Article 8(1)(t) and (u)  |
| Article 2(1a)                                | Articles 34(2) and 34(3) |
| Article 2(2)                                 | Article 8(2)             |
| -                                            | Article 8(3)             |
| -                                            | Article 9                |
| -                                            | Article 10               |
| Article 2a                                   | Article 35               |
| Article 3(1), first and fourth subparagraphs | Article 15(3)            |
| Article 3(1), second subparagraph            | -                        |
| Article 3(1), third subparagraph             | Article 15(4)            |
| Article 3(1a), first subparagraph            | Article 25(1)            |
| Article 3(1a), second subparagraph           | Article 25 (2)           |
| Article 3(1a), third subparagraph            | Article 21(5)            |
| Article 3(1a), fourth subparagraph           | Article 25(4)            |

| Regulation (EC) No 2007/2004                          | This Regulation                               |
|-------------------------------------------------------|-----------------------------------------------|
| Article 3(1b)                                         | -                                             |
| Article 3(2)                                          | -                                             |
| Article 3(3)                                          | Article 26                                    |
| Article 3(4)                                          | -                                             |
| Article 3(5)                                          | -                                             |
| Article 3a(1), first subparagraph                     | Article 16(2)                                 |
| Article 3a(1), second subparagraph, introductory part | Article 16(3), introductory part              |
| Article 3a(1), second subparagraph, point (a)         | Article 16(3)(a)                              |
| Article 3a(1), second subparagraph, point (b)         | Article 16(3)(b)                              |
| Article 3a(1), second subparagraph, point (c)         | Article 16(3)(c)                              |
| Article 3a(1), second subparagraph, point (d)         | Article 16(3)(d)                              |
| Article 3a(1), second subparagraph, point (e)         | Article 16(3)(e)                              |
| Article 3a(1), second subparagraph, point (f)         | Article 16(3)(f)                              |
| Article 3a(1), second subparagraph, point (g)         | Article 16(3)(g)                              |
| Article 3a(1), second subparagraph, point (h)         | Article 16(3)(h)                              |
| Article 3a(1), second subparagraph, point (i)         | Article 16(3)(i)                              |
| Article 3a(1), second subparagraph, point (j)         | Article 16(3)(j)                              |
| Article 3a(1), second subparagraph, point (k)         | Article 16(3)(k)                              |
| Article 3a(2)                                         | Article 16(4)                                 |
| Article 3a(3)                                         | Article 22(1)                                 |
| Article 3b(1)                                         | Article 20(2)                                 |
| Article 3b(2)                                         | Article 20(3)                                 |
| Article 3b(3), first and second subparagraph          | Article 20(11), first subparagraph            |
| Article 3b(3), third subparagraph                     | Article 20(11), second and third subparagraph |

| Regulation (EC) No 2007/2004                 | This Regulation      |
|----------------------------------------------|----------------------|
| Article 3b(4)                                | Article 21(4)        |
| Article 3b(5), first subparagraph            | Article 22(2)        |
| Article 3b(5), second subparagraph           | Article 22(3)        |
| Article 3b(6)                                | -                    |
| Article 3b(7)                                | Article 20(12)       |
| Article 3c(1)                                | Article 21(1)        |
| Article 3c(2)                                | Article 21(2)        |
| Article 3c(3)                                | -                    |
| Article 3c(4)                                | Article 21(5)        |
| Article 4, first paragraph                   | Article 11(1)        |
| Article 4, second paragraph                  | Article 11(2)        |
| -                                            | Article 11(3)        |
| Article 4, third paragraph                   | Article 13(4)        |
| Article 4, fourth paragraph                  | Article 11 (5)       |
| Article 4, fifth paragraph                   | Article 11(4)        |
| -                                            | Article 11(6)        |
| Article 4, sixth paragraph                   | Article 11(7)        |
| -                                            | Article 12           |
| -                                            | Article 13(1) to (3) |
| -                                            | Article 13(5) to (9) |
| Article 5, first paragraph                   | Article 36(1)        |
| Article 5, second paragraph                  | Article 36(2)        |
| -                                            | Article 36(4)        |
| Article 5, third, fourth and fifth paragraph | Article 36(5)        |
| Article 5, sixth paragraph                   | Article 36(6)        |

| Regulation (EC) No 2007/2004      | This Regulation                                    |
|-----------------------------------|----------------------------------------------------|
| Article 5, seventh paragraph      | Article 36(7)                                      |
| Article 5, eight paragraph        | Article 36(8)                                      |
| Article 6                         | Article 37(1)                                      |
| Article 7(1), first subparagraph  | Articles 38(1), 38(2) and 38(3)                    |
| Article 7(1), second subparagraph | Article 38(4)                                      |
| Article 7(1), third subparagraph  | Article 38(5)                                      |
| Article 7(2)                      | Articles 39(1) and 39(6)                           |
| Article 7(3)                      | Article 39(8)                                      |
| Article 7(4)                      | Article 39(15)                                     |
| Article 7(5), first subparagraph  | Article 39(16)                                     |
| Article 7(5), second subparagraph | Article 39(9)                                      |
| Article 7(5), third subparagraph  | Article 39(5), first subparagraph                  |
| Article 7(5), fourth subparagraph | Article 39(5), second subparagraph                 |
| Article 7(6)                      | Article 39(12)                                     |
| Article 7(7)                      | Article 39(13)                                     |
| Article 8(1)                      | Article 14(1) and Article 14(2), introductory part |
| Article 8(2), introductory part   | Article 14(2), introductory part                   |
| Article 8(2)(a)                   | -                                                  |
| Article 8(2)(b)                   | Article 14(2)(f)                                   |
| Article 8(2)(c)                   | Article 14(2)(a) and (b)                           |
| -                                 | Article 14(2)(c) to (e) and Article 14(2)(g)       |
| -                                 | Article 14(3)                                      |
| -                                 | Article 14(4)                                      |

| Regulation (EC) No 2007/2004     | This Regulation          |
|----------------------------------|--------------------------|
| Article 8(3)                     | -                        |
| -                                | Article 15(1)            |
| Article 8a                       | Article 15(2)            |
| Article 8b(1)                    | Article 20(8)            |
| Article 8b(2)                    | -                        |
| Article 8c                       | Article 36               |
| -                                | Article 15(5)            |
| Article 8d(1)                    | Article 17(1)            |
| Article 8d(2)                    | Article 17(2)            |
| Article 8d(3)                    | Article 17(3)            |
| Article 8d(4)                    | Article 17(4)            |
| -                                | Article 17(5)            |
| Article 8d(5)                    | Article 17(6)            |
| Article 8d(6)                    | Articles 17(7) and 17(8) |
| Article 8d(7)                    | -                        |
| Article 8d(8)                    | Article 17(9)            |
| Article 8d(9)                    | Article 17(10)           |
| -                                | Article 16(1)            |
| Article 8e(1), introductory part | -                        |
| Article 8e(1)(a)                 | Article 16(3)(a)         |
| Article 8e(1)(b)                 | Article 16(3)(b)         |
| Article 8e(1)(c)                 | Article 16(3)(c)         |
| Article 8e(1)(d)                 | Article 16(3)(d)         |
| Article 8e(1)(e)                 | Article 16(3)(e)         |

| Regulation (EC) No 2007/2004     | This Regulation                  |
|----------------------------------|----------------------------------|
| Article 8e(1)(f)                 | Article 16(3)(f)                 |
| Article 8e(1)(g)                 | Article 16(3)(g)                 |
| Article 8e(1)(h)                 | Article 16(3)(h)                 |
| Article 8e(1)(i)                 | Article 16(3)(i)                 |
| Article 8e(1)(j)                 | Article 16(3)(j)                 |
| Article 8e(1)(k)                 | Article 16(3)(k)                 |
| -                                | Article 16(3)(l) to (n)          |
| Article 8e (2)                   | Article 16(4)                    |
| -                                | Article 17(11)                   |
| -                                | Article 18                       |
| -                                | Article 19                       |
| -                                | Article 20(1)                    |
| -                                | Article 20(4)                    |
| -                                | Article 20(5) to (7)             |
| -                                | Article 20(9) and (10)           |
| -                                | Article 21(3)                    |
| Article 8f                       | Article 23                       |
| Article 8g(1)                    | Article 22(2)                    |
| Article 8g(2), introductory part | Article 22(3), introductory part |
| Article 8g(2)(a)                 | Article 22(3)(a)                 |
| Article 8g(2)(b)                 | Article 22(3)(a)                 |
| Article 8g(2)(c)                 | Article 22(3)(b)                 |
| Article 8g(2)(d)                 | Article 22(3)(c)                 |
| -                                | Article 22(3)(d)                 |

| Regulation (EC) No 2007/2004 | This Regulation                  |
|------------------------------|----------------------------------|
| Article 8g(3)                | Article 22(4)                    |
| Article 8g(4)                | -                                |
| Article 8h                   | Article 24                       |
| -                            | Article 25(3)                    |
| -                            | Article 27(1) to (3)             |
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