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NOTE

From: Presidency
To: Permanent Representatives Committee/Council

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

Building upon the European Council Conclusions of June last and as a contribution to the informal summit in Salzburg on 19-20 September 2018, the European Commission has proposed on 12 September 2018, a new strengthening mandate for the European Border and Coast Guard Agency. At the informal summit in Salzburg, the Heads of State or Government expressed their shared determination to take forward as a priority the Commission's proposal.. The European Council in its Conclusions of 18 October 2018 reiterated its invitation to the Council and the European Parliament to examine the EBCG proposal as a matter of priority.

At the JHA Council in Luxemburg on 12 October 2018, the discussion confirmed a broad support for an enhanced mandate, especially with regard to return activities and operations of the Agency in third countries. Discussions at the Working Party on Frontiers, as well as in SCIFA on 23 October 2018 confirmed this.

Based upon this broad support of the Member States and in order to keep the momentum for the negotiations, the Presidency decided to seek a partial general approach on the two aforementioned issues.

A) The provisions regarding the action by the Agency in the area of return

The Permanent Representatives Committee, at its session of 28 November 2018, decided to invite the Council to confirm a partial general approach on the basis of a compromise contained in Articles 49-1 to 54. These provisions, set out in the Annex to this Note, contain certain modifications, vis-à-vis the text submitted to Coreper on 28 November 2018, so as to reflect the outcome of that discussion.

The Presidency has taken into account most of the concerns and suggestions expressed by Member States during the aforementioned discussions. In this vein, the Presidency compromise text addressed primarily the following issues:

a) Cooperation between the Agency and the Member States in the area of returns

In order to highlight the primary role of the Member States and the supporting role of the Agency in the area of returns, the Presidency aims to clarify by means of a new Article 49-1 that all measures linked to the implementation of measures relating to returns shall take place either upon request of the Member State concerned or on initiative of the Agency and in agreement with and subject to the competence of that Member State.

b) Technical and operational assistance to Member States in all phases of return

Following suggestions by a number of delegations, the Presidency specified in Article 49 that technical and operational assistance is provided by the Agency in all phases of the return of third country nationals, including post-return and post-arrival activities and assisted voluntary return. The text further provides for financial support for the development of national return case management systems.

c) Information exchange systems and management of return

The compromise proposal specifies that the personal data which is to be processed by the Agency, shall include in particular biometric or biographic data where necessary to confirm the identity of third-country nationals.

B) Cooperation with third countries

The Presidency compromise text of the Articles related to third country cooperation of the proposal (Articles 72-79) aims at addressing primarily the following issues:

- a) Member States may cooperate with third countries in the areas covered by the Regulation. Such cooperation may take place on the basis of bilateral or multilateral agreements, other forms of arrangements or through regional networks.
- b) Many Member States have pointed out that operations on the territory of third countries shall be on a voluntary basis. The Presidency tried to address this wish by adding a new paragraph 3a in Article 75. A suggestion to provide Member States with the possibility of opting out of their respective contributions to an operation in a third country if they are faced with a situation that would substantially affect their discharge of national tasks or where the security of the participating personnel cannot be guaranteed to the satisfaction of the Member State concerned was strongly supported by the majority delegations. Consequently, the Presidency decided to include it in the text between square brackets, clarifying with a footnote that it will be subject to further negotiations in future discussions regarding the standing corps.
- c) The role of the Commission with regard to cooperation with third countries was subject of long discussions during the JHA Counsellors meetings. With the current compromise proposal the Presidency believes that it has struck a balance between Member States' obligation for notification deriving from the Treaties and the sovereignty of Member States. Before a new bilateral or multilateral agreement referred to in Article 73 (1) is concluded, Member States shall notify its provisions related to border management and return to the Commission.

- d) On the basis of the compromise text, the scope of the pool from which the Agency may deploy liaison officers in third countries is extended, thus allowing the nomination of experts other than those being part of the Agency's statutory staff. Following the wish of several delegations the compromise provides for giving to the Agency the possibility to support the deployment of return liaison officers by a Member State, in third countries where return liaison officers are not deployed by the Agency itself.

The Presidency wants to stress that the impact of the composition of the standing corps with regard to the activities of the Agency in third countries is to be clarified at a later stage in the course of the negotiations about the setting up of the standing corps.

It is submitted that the Permanent Representatives Committee is inviting the Council to reach a partial general approach on Articles 49-1 to 54 and 72 to 79 of the proposal, in the light of the following elements:

- such partial general approach shall be agreed on the understanding of the principle that nothing is agreed until everything is agreed and this would not exclude the possibility of future changes in the provisionally agreed Articles to ensure the overall coherence of the draft Regulation;
- such partial general approach is without prejudice to any horizontal questions, in particular any issues related to the standing corps;
- such partial general approach does not mandate the Presidency to engage in informal trilogues with the European Parliament on the provisionally agreed part of the proposal.

SECTION 8

ACTION BY THE AGENCY IN THE AREA OF RETURNS

Article ~~49-17~~¹

Shared responsibility

2. The Agency shall provide technical and operational assistance in the implementation of measures relating to ~~the enforcement of returns decisions~~, upon request of the Member State concerned, or on initiative of the Agency and in agreement with and subject to the competence of the Member States concerned. Member States shall retain the responsibility for issuing return decisions and for adopting the measures pertaining to the detention of returnees in accordance with Directive 2008/115/EC.

Article 49

Return

1. The Agency shall, with regard to return, and in accordance with the respect for fundamental rights and general principles of Union law as well as for international law, including refugee protection and children's rights, in particular:
 - (a) provide technical and operational assistance to Member States in all phases of the return the return of third country nationals, including providing assistance in preparatory activities necessary for issuing the preparation of return decisions, ~~the identification of third country nationals~~ and other pre-return, ~~and return-related~~ and post-return and post-arrival activities of the Member States, including assisted voluntary departures ~~return~~, 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;

¹ This text is to be integrated in Article 7(2), following an examination of the entire Article.

- (b) provide technical and operational assistance to Member States experiencing challenges with regard to return or ~~management of the~~addressing migratory pressure, including by deploying migration management support teams;
- (c) develop a non-binding reference model for a national return case management system ~~prescribing~~describing the structure of ~~national return management~~such systems, as well as provide technical and operational assistance to Member States in developing ~~national return management~~such systems ~~aligned~~compatible with the model;
- (d) develop and operate a central system and a communication infrastructure ~~between~~that enables the linking of the national return management systems of the Member States ~~and with the central system,~~ **for exchange of data and information, including the automated exchange of statistical data,** as well as provide technical and operational assistance to Member States in connecting to the communication structure;
- (e) provide technical and operational assistance to the Member States in the identification of third-country nationals and the acquisition of travel documents, including by means of consular cooperation, without disclosing information relating to the fact that an application for international protection has been made; organise and coordinate return operations and provide support with voluntary ~~departures~~return in cooperation with the Member States;
- (f) organise, promote and coordinate activities enabling the exchange of information and the identification and pooling of best practices in return matters between the Member States;
- (g) finance or co-finance the operations, interventions and activities, including **support the costs incurred for the development or necessary adaptation of the national return management systems in accordance with point e,** referred to in this Chapter from its budget, in accordance with the financial rules applicable to the Agency.

~~[(h) provide the services mentioned in the above subparagraphs, as applicable, to support the enforcement of refusal of entries according to article 22 of the Return Directive]~~²³

2. The technical and operational assistance referred to in point (b) of paragraph 1 shall include activities to help Member States carry out return procedures by the competent national authorities by providing, in particular:
 - (a) interpreting services;
 - (b) practical information, analysis and recommendations on third countries of return relevant for the implementation of this Regulation, in cooperation, where appropriate, with other Union bodies, offices and agencies, including EASO;
 - (c) advice on and technical and operational assistance in the implementation and management of return procedures in compliance with Directive 2008/115/EC, including providing assistance in preparatory activities necessary for issuing in the preparation of return decisions, in identification and in the acquisition of travel documents;
 - (d) advice on and assistance in implementing measures taken by the Member States necessary to ensure the availability of returnees for return purposes ~~and~~ as well as to preventing returnees from absconding, in accordance with Directive 2008/115/EC and international law;
 - (e) equipment, capacities and expertise for the implementation of return decisions and for the identification of third-country nationals.
3. The Agency shall aim at building synergies and connecting Union-funded networks and programmes in the field of return in close cooperation with the Commission and with the support of relevant stakeholders, including the European Migration Network.

² ~~Subject to discussion in the context of the Return Directive.~~

³ Certain delegations advocated dealing with this issue in the context of discussions related to tasks of the Agency (Article 10).

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

Article 50

Information exchange systems and management of return

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

1. ~~In particular,~~†The Agency shall set up, operate and maintain an information exchange system, in accordance with Article 49(1)(d), for processing operational data and information, as well as personal data communicated by the Member States' national return management systems, necessary for the Agency to provide technical and operational assistance in accordance with Article 49(1)(d).⁴ Such personal data shall only include in particular:
- (a) for the purpose of the Agency to provide assistance in confirming the identity and nationality of third-country nationals, biometric or biographic or biometric data where necessary to confirm the identity and nationality of third-country nationals or for the purposes of the Agency assisting in the coordination or organisation of return operations, including all types of documents which can be considered as proof or prima facie evidence of nationality;

⁴ New recital to be included: The technical standards for information systems and software applications should be aligned with the standards used by eu LISA for other IT systems in the area of freedom, security and justice.

- (b) ~~biographic data or passenger lists~~ for the purposes of the Agency assisting in the coordination or organisation of return operations to third countries, irrespective of the means of transport, biographic data or passenger lists;
2. The Agency shall also develop, deploy and operate software applications allowing for the exchange of ~~classified and sensitive non-classified~~ information for the purpose of return within the European Border and Coast Guard, as well as with the authorities of third countries, or international organisations, in accordance with Commission Decision (EU, Euratom) 2015/444, and Commission Decision (EU, Euratom) 2015/443.
3. The software applications may also allow for exchange of personal data ~~referred to in Articles 87-89~~, where such exchange is necessary for the purposes defined in ~~those~~ Articles 88(a) and (b), in accordance with the provisions in Article 87 to 89.
4. Personal data shall be exchanged in accordance with Articles 87 and 89, as applicable.⁵ ~~to [Regulation (EC) No 45/2001]. Personal data shall be erased from the system or the software applications when they are no longer necessary in relation to the purposes for which they were collected or otherwise processed.~~

Article 51

Return operations

1. Without entering into the merits of return decisions, the Agency shall provide technical and operational assistance and ensure the coordination or the organisation of return operations, including through the chartering of aircraft for the purpose of such operations or organising returns on scheduled flights. The Agency may, on its own initiative, in accordance with Article ~~7(2)~~49-1, coordinate or organise return operations.

⁵ Proposed deletion due to the fact that data retention and deletion is clearly regulated in the General Data Protection Regulation applicable to the EU institutions and agencies, which will be adopted soon replacing Regulation EC 45 2001.

2. Member States shall by use of the system referred to in Article 50(1) ~~on a monthly basis~~ provide operational data on return necessary for the assessment of return needs by the Agency and inform the Agency of their indicative planning of the number of returnees and of the third countries of return, both with respect to relevant national return operations, and of their needs for assistance or coordination by the Agency. The Agency shall draw up and maintain a rolling operational plan to provide the requesting Member States with the necessary operational assistance and reinforcements, including through technical equipment. The Agency may, on its own initiative in accordance with Article ~~7(2)49-1~~ or at the request of a Member State, include in the rolling operational plan the dates and destinations of return operations it considers necessary, based on a needs assessment. The management board shall decide, on a proposal of the executive director, on the modus operandi of the rolling operational plan.
3. The Agency may provide technical and operational assistance and, either at the request of the participating Member States or on its own initiative in accordance with Article ~~7(2)49-1~~, may also ensure the coordination or the organisation of return operations for which the means of transport and forced-return escorts are provided by a third country of return ('collecting return operations'). The participating Member States and the Agency shall ensure that the respect for fundamental rights, the principle of non-refoulement, and the proportionate use of means of constraints are guaranteed during the entire return operation. At least one Member State representative, and one forced-return monitor from the pool established under Article 52 or from the national monitoring system of the participating Member State, shall be present throughout the entire return operation until arrival at the third country of return.
4. The executive director shall draw up a return plan without delay for collecting return operations. The executive director and any participating Member State shall agree on the plan detailing the organisational and procedural aspects of the collecting return operation, taking account of the fundamental rights implications and risks of such operations. Any amendment to or adaptation of this plan shall require the agreement of the parties referred to in paragraph 3 and in this paragraph.

- ~~5.~~ The return plan of collecting return operations shall be binding on the Agency and any participating Member State. It shall cover all the necessary steps for carrying out the collecting return operation.
5. ~~Every~~ Return operations organised or coordinated by the Agency shall be monitored in accordance with Article 8(6) of Directive 2008/115/EC. The monitoring of forced return operations shall be carried out by the forced return monitor on the basis of objective and transparent criteria and shall cover the whole return operation from the pre-departure phase until the hand-over of the returnees in the third country of return. The forced-return monitor shall submit a report on each monitored 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.
- 5a. If the Agency has concerns regarding the respect of fundamental rights during a return operation, it shall communicate them to the participating Member States and to the Commission.
6. The executive director shall evaluate the results of the return operations and shall transmit every six months a detailed evaluation report covering all return operations conducted in the previous semester to the management board, together with the observations of the fundamental rights officer. The executive director shall make a comprehensive comparative analysis of those results with a view to enhancing the quality, coherence and effectiveness of future return operations. The executive director shall include that analysis in the Agency's annual activity report.
7. The Agency shall finance or co-finance return operations from its budget, in accordance with the financial rules applicable to the Agency, giving priority to those conducted by more than one Member State, or from hotspot areas [or controlled centres].

Article 52

Pool of forced-return monitors

1. The Agency shall, after consulting the fundamental rights officer, constitute a pool of forced-return monitors from competent bodies from the Member States who carry out forced-return monitoring activities in accordance with Article 8(6) of Directive 2008/115/EC and who have been trained in accordance with Article 62 of this Regulation.
2. The management board shall, on a proposal of the executive director determine the profile and the number of forced-return monitors to be made available to that pool. The same procedure shall apply with regard to any subsequent changes in the profile and overall numbers. Member States shall be responsible for contributing to the pool by nominating forced-return monitors, ~~taking into account the independence, if such is the case, of these monitors under national law,~~ corresponding to the defined profile, without prejudice to the independence, if such is the case, of these monitors under national law. Forced-return monitors with specific expertise in child protection shall be included in the pool.
3. Member States' contribution of forced-return monitors to return operations and interventions for the following year shall be planned on the basis of annual bilateral negotiations and agreements between the Agency and Member States. In accordance with those agreements, Member States shall make the forced-return monitors available for deployment at the request of the Agency, unless they are faced with an exceptional situation substantially affecting the discharge of national tasks. Such a request shall be made at least 21 working days before the intended deployment, or five working days in case of a rapid return intervention.
4. The Agency shall make the forced-return monitors available upon request to participating Member States to monitor, on their behalf, the correct implementation of the return operation and return interventions throughout their duration. It shall make available forced-return monitors with specific expertise in child protection for any return operation involving children.

5. Forced-return monitors shall remain subject to the disciplinary measures of their home Member State in the course of a return operation or return intervention.

Article 53

Return teams

1. The Agency may deploy return teams either at the request of a Member State or on its own initiative, in ~~the light of~~accordance with Article ~~47(4) 7(2)49-1~~, during return interventions, in the framework of migration management teams or as necessary to provide additional technical and operational assistance in the area of return, including where such challenges are linked to migratory pressure, large inward mixed migratory flows or ~~taking in~~ third-country nationals rescued at sea.
2. Article 41(2),(3),(4) and (5), and Articles 44, 45 and 46 shall apply mutatis mutandis to the European return teams.

Article 54

Return interventions

1. In circumstances where a Member State is facing a burden when implementing the obligation to return third-country nationals who are the subject of return decisions issued by a Member State, the Agency shall, either on its own initiative, in ~~the light of~~accordance with Article ~~47(4) 7(2)49-1~~, or upon request of that Member State, provide the appropriate technical and operational assistance in the form of a return intervention. Such intervention may consist of the deployment of return teams to the host Member State providing assistance in the implementation of return procedures and the organisation of return operations from the host Member State.

2. The Agency may also launch return interventions in third countries, based on the directions set out in the multiannual strategic policy cycle in accordance to Article 74(2), where such third country requires additional technical and operational assistance with regard to its return activities. Such intervention may consist of the deployment of return teams for the purpose of providing technical and operational assistance to return activities of the third country.
3. In circumstances where a Member State is facing specific and disproportionate challenges when implementing its obligation to return third-country nationals who are the subject of return decisions, the Agency shall, either on its own initiative, in ~~the light of~~ accordance with Article ~~47(4) 7(2)49-1~~, or upon the request of that Member State, provide the appropriate technical and operational assistance in the form of a rapid return intervention. A rapid return intervention may consist in the rapid deployment of return teams to the host Member State providing assistance in the implementation of return procedures and the organisation of return operations from the host Member State.
4. In the context of a return intervention, the executive director shall draw up an operational plan without delay, in agreement with the host Member State and the participating Member States. The relevant provisions of Article 39 shall apply.
5. The executive director shall take a decision on the operational plan as soon as possible and, in the case referred to in paragraph 2, within five working days. The decision shall be immediately notified, in writing, to the Member States concerned and to the management board.
6. The Agency shall finance or co-finance return interventions from its budget in accordance with the financial rules applicable to the Agency.

New recital (related to Article 72(2))

The assistance to third countries should complement the Agency's support for Member States in the application of Union measures relating to the management of the external borders and the enforcement of return decisions.

New recital (related to Article 74)

The bi- and multilateral agreements concluded by Member States with third countries in the areas covered by Integrated Border Management may contain security sensitive information. When notified to the Commission, they should be handled accordingly.

SUB SECTION 2

COOPERATION WITH THIRD COUNTRIES

Article 72

Cooperation with third countries

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

Article 73
Cooperation of Member States with third countries

1. ~~For the purposes of this Regulation,~~ Member States may ~~continue~~ cooperate at an operational level ~~and exchange information~~ with one or several third countries ~~in the areas covered by the subject matter of this Regulation~~. Such cooperation ~~and may include~~ exchange of information ~~and shall may~~ take place on the basis of bilateral or multilateral agreements, ~~or other forms of arrangements, or~~ through regional networks established on the basis of those agreements.
2. When concluding the bilateral and multilateral agreements referred to in paragraph 1, Member States ~~shall may~~ include provisions concerning information exchange and cooperation ~~in the framework for the purpose of EUROSUR, in accordance with~~ If such agreements include such provisions, they shall comply with Article 76(2) and Article 90 **shall apply**.
3. The agreements referred to in paragraph 1 shall comply with Union and international law on fundamental rights and on international protection, including the Charter of Fundamental Rights of the European Union, the Convention for the Protection of Human Rights and Fundamental Freedom and the Convention Relating to the Status of Refugees, in particular the principle of non-refoulement. When implementing such agreements, also having regard to Article 8, Member States shall ~~continuously~~ regularly assess and take into account the general situation in the third country.

Article 74
Cooperation between the Agency and third countries

1. The Agency may cooperate with the authorities of third countries competent in matters covered by this Regulation and to the extent required for the fulfilment of its tasks.
2. When doing so, ~~it the~~ Agency shall act within the framework of the external action policy of the Union, including with regard to the protection of fundamental rights and the principle of non-refoulement, with the support of, and in coordination with, Union delegations and, where relevant, CSDP missions and operations, in full respect of their mandate.

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

⁶ Impact of the composition of the standing corps to be clarified later when the negotiation on standing corps have been finalised.

8. ~~The Agency shall include an assessment of the cooperation with third countries in its annual reports.~~

Article 75

Technical and operational assistance provided by the Agency to third Countries

1. As provided for in Article 72 ~~(32)~~, ~~in circumstances requiring increased technical and operational assistance,~~ the Agency may coordinate operational cooperation between Member States and third countries and provide ~~operational support~~ such assistance to third countries in the context of the European integrated border management including returns.
2. The Agency shall have the possibility of carrying out actions ~~at the external borders of a third country~~ on the territory of a third country, subject to the agreement of that third country, ~~including on the territory of that third country~~.
3. Operations on the territory of a third country shall be included in the annual work programme ~~adopted by the Management Board referred to in accordance with~~ Article 100 ~~(1) and (7)~~, and carried out on the basis of an operational plan agreed between the Agency and the third country concerned and in consultation with the participating Member States. In case of such operations ~~carried out at the common border between territory of the third country and one or more Member States~~, the operational plan, as well as any amendments to that plan, shall have the agreement of the Member State or Member States neighbouring the third country or bordering the operational area of the third country ~~concerned~~ bordering the operational area. ~~Operational plans may include provisions concerning information exchange and cooperation in the framework of EUROSUR in accordance with Article 76.~~

- 3a. Without prejudice to the deployment of the members of the European Border and Coast Guard [~~standing corps~~⁷] in accordance with Articles 55 to 58], the participation of Member States in ~~joint~~ operations on the territory of third countries shall be on voluntary basis. **If a Member State is faced with a situation that would substantially affect its discharge of national tasks or where the security of the participating personnel cannot be guaranteed to the satisfaction of the Member State, the Member State can opt out of its respective contribution to the operation in the third country. If a Member State invokes such an exceptional situation, it shall provide comprehensive reasons and information on the situation to the Agency in writing, the content of which shall be included in the report referred to in Article 65.**⁸
- 3b. Operational plans referred to in paragraph 3 may include provisions concerning information exchange and cooperation for the purpose of EUROSUR in accordance with Articles 76(2) and 90.
4. The Agency may provide assistance to return activities of third countries and ensure the coordination or the organisation of return operations, during which a number of returnees are returned from this third country to another third country. Such return operations may be organised with participation of one or more Member States ('mixed return operations') or as national return operations, in particular when this is justified by the priorities of the irregular migration policy of the Union. The participating Member States and the Agency shall ensure that the respect of fundamental rights and the proportionate use of means of constraints are guaranteed during the whole removal operation, notably with the presence of forced return monitors and of third-country forced return escorts.

⁷ Ibid.

⁸ **This addition subject to further negotiations in future discussions on the standing corps.**

Article 76

Information exchange with third Countries in the framework of EUROSUR

1. The national coordination centres of the Member States referred to in Article 21 and, when relevant, the Agency shall be the contact points for the exchange of information and cooperation with third countries ~~in the framework~~ for the purpose of EUROSUR.
2. The provisions for the exchange of information ~~in the framework~~ for the purpose of EUROSUR referred to in Article ~~72-73~~ (2) shall ~~detail~~ address:
 - (a) the specific situational pictures shared with third countries;
 - (b) the data originating from third countries which can be shared in the European Situational Picture and the procedures for sharing these data;
 - (c) the procedures and conditions by which EUROSUR Fusion Services can be provided to third countries' Authorities;
 - (d) the modalities of cooperation and information exchange with third countries observers for the purpose of EUROSUR.
3. Information provided in the context of EUROSUR by the Agency or by a Member State which is not party to an agreement as referred to in paragraph 1 of Article 73 shall not be shared with a third country under that agreement without the prior approval of the Agency or of that Member State. The Member States and the Agency shall be bound by the refusal to share that information with the third country concerned.

Article 77

Role of the Commission with regard to cooperation with third countries

1. The Commission shall negotiate the status agreement referred to in Article 74 (3) in accordance with Article 218(3) TFEU.

2. The Commission, ~~after consulting~~ in cooperation with the Member States and the Agency, shall draw up model provisions ~~for the bilateral and multilateral agreements referred to in Article 71(2) and Article 73~~ for the exchange of information in the framework of EUROSUR ~~as provided for in Article 76 (2)~~ in accordance with Article 71(2), and Article 73(2).

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

- ~~3. The Member States concerned shall notify existing bilateral and multilateral agreements referred to in Article 73 (1) to the Commission, which shall verify whether their provisions comply with this Regulation.⁹~~

- ~~43. Before a new bilateral or multilateral agreement referred to in Article 73 (1) is concluded, the Member State(s) concerned shall notify it to ~~consult~~ notify its draft provisions related to border management and return to the Commission ~~as to the compatibility of the draft agreement~~, which shall ~~verify~~ review ~~whether its provisions comply with this Regulation. and inform~~ The Commission shall respond within a reasonable time period ~~limit agreed with the Member State~~ accordingly concerned.~~

- ~~54. Once a new agreement is concluded, the Member State concerned shall notify it to the Commission, which shall inform the European Parliament, the Council and the Agency thereof. The Member States concerned shall notify the provisions of existing and new bilateral and multilateral agreements referred to in Article 73 (1) related to border management and return to the Commission, which shall verify whether their provisions comply with this Regulation. inform the Council and the Agency thereof.~~

- ~~65. Before any working arrangements ~~with~~ between the Agency and ~~third parties or~~ competent authorities of third countries are ~~approved~~ concluded by the Management Board, the Agency shall notify them to the Commission, which shall give its prior approval. Once working arrangements are concluded, the Agency shall notify them to the Commission, which shall inform ~~the European Parliament and the Council~~ thereof.~~

⁹ Inserted in paragraph 5

76. The Agency shall notify the operational plans referred to in Article 75 (3) to the Commission. The decision to deploy liaison officers to third countries in accordance with Article 78 shall be subject to receiving the prior opinion of the Commission. The European Parliament shall be kept fully informed of those activities without delay.

Article 78

Liaison officers of the Agency in third countries

1. The Agency may deploy experts from its statutory staff¹⁰ **as well as other experts** as liaison officers, who should enjoy the highest possible protection when carrying out their duties in third countries. They shall form part of the local or regional cooperation networks of immigration liaison officers and security experts of the Union and of the Member States, including the network set up pursuant to Regulation (EC) No 377/2004. By decision of the management board the Agency may lay down specific profiles of liaison officers, such as return liaison officers, depending on the operational needs with regard to the third country concerned.
2. Within the framework of the external action policy of the Union, priority for the deployment of liaison officers shall be given to those third countries which, on the basis of a risk analysis, constitute a country of origin or transit regarding illegal immigration. The Agency may receive liaison officers posted by those third countries on a reciprocal basis. The management board shall, on a proposal of the executive director, adopt the list of priorities on a yearly basis. The deployment of liaison officers shall be approved by the management board upon the opinion of the Commission.

¹⁰ Ibid.

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 returns of returnees~~, including by providing technical assistance in identification of third-country nationals and the acquisition of travel documents. Those liaison officers shall coordinate closely with Union delegations, with Member States in accordance with Regulation (EC) No 377/2004 and, where relevant, CSDP missions and operations.
4. **In third countries where return liaison officers are not deployed by the Agency, the Agency may support the deployment of a return liaison officer by a Member State to provide support to Member States, as well as to the Agency's activities, in accordance with Article 49.**

Article 79

Observers participating in the Agency's activities

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

2. The Agency may, with the agreement of the Member States concerned, invite observers from third countries to participate in its activities at the external borders referred to in Article 37 , return operations referred to in Article 51, return interventions referred to in Article 54 and training referred to in Article 62, to the extent that their presence is in accordance with the objectives of those activities, may contribute to improving cooperation and the exchange of best practices, and does not affect the overall safety of those activities. The participation of those observers may take place only with the agreement of the Member States concerned regarding the activities referred to in Articles 37, 43, 51 and 62 and only with the agreement of the host Member State regarding those referred to in Articles 37 and 54. Detailed rules on the participation of observers shall be included in the operational plan. Those observers shall receive appropriate training from the Agency prior to their participation. They shall be required to adhere to the codes of conduct of the Agency while participating in its activities.
