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**LEGISLATIVE ACTS AND OTHER INSTRUMENTS**

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| Subject: | COUNCIL REGULATION amending Regulation (EC) No 168/2007 establishing a European Union Agency for Fundamental Rights |

**COUNCIL REGULATION (EU) 2021/…**

**of …**

**amending Regulation (EC) No 168/2007**
**establishing a European Union Agency for Fundamental Rights**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 352 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 consent of the European Parliament[1],

Acting in accordance with a special legislative procedure,

[1] Consent of … (not yet published in the Official Journal).

Whereas:

(1) The European Union Agency for Fundamental Rights (the 'Agency') was established by Council Regulation (EC) No 168/2007[1] to provide the Union institutions, bodies, offices and agencies and Member States with assistance and expertise relating to fundamental rights.

(2) In order to adapt the Agency's scope and to enhance the governance and the efficiency of the Agency's operation, it is necessary to amend certain provisions of Regulation (EC) No 168/2007 without changing the objective and the tasks of the Agency.

(3) In view of the entry into force of the Treaty of Lisbon, the Agency's scope should also cover police cooperation and judicial cooperation in criminal matters, areas which are particularly sensitive with regard to fundamental rights.

(4) The area of common foreign and security policy should be excluded from the Agency's scope. This should be without prejudice to the Agency's provision of assistance and expertise, for example training activities on fundamental rights issues, to the institutions, bodies, offices and agencies of the Union, including to those working in the area of common foreign and security policy.

[1] Council Regulation (EC) No 168/2007 of 15 February 2007 establishing a European Union Agency for Fundamental Rights (OJ L 53, 22.2.2007, p. 1).

(5) Furthermore, some targeted technical amendments of Regulation (EC) No 168/2007 are necessary in order for the Agency to be governed and operated in line with the principles of the Common Approach annexed to the Joint Statement of the European Parliament, the Council of the EU and the European Commission on decentralised agencies of 19 July 2012 (the 'Common Approach'). The alignment of Regulation (EC) No 168/2007 with the principles set out in the Common Approach is tailored to the specific work and nature of the Agency and aims to bring simplification, better governance and efficiency gains to the Agency's operation.

(6) The definition of the areas of activity of the Agency should be based on the Agency's programming document alone. The current approach of setting in parallel a broad thematic Multiannual Framework every five years should be discontinued, as it has been made redundant by the programming document that the Agency has adopted annually since 2017, to conform with Commission Delegated Regulation (EU) No 1271/2013[1], succeeded by Commission Delegated Regulation (EU) 2019/715[2]. Based on the Union policy agenda and on stakeholders' needs, the programming document clearly sets out the areas and specific projects on which the Agency is to work. This should enable the Agency to plan its work and thematic focus over time and to adapt it annually to emerging priorities.

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[1] 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).

[2] Commission Delegated Regulation (EU) 2019/715 of 18 December 2018 on the framework financial regulation for the bodies set up under the TFEU and Euratom Treaty and referred to in Article 70 of Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council (OJ L 122, 10.5.2019, p. 1).

(7) The Agency should submit its draft programming document to the European Parliament, the Council and the Commission as well as to the national liaison officers and to the Scientific Committee by 31 January each year. The purpose is for the Agency, while carrying out its tasks in full independence, to draw inspiration from discussions or opinions on such draft programming document in order to design the most relevant work programme to support the Union and the Member States by providing assistance and expertise relating to fundamental rights.

(8) In order to ensure smooth communication between the Agency and the Member States, the Agency and the national liason officers should work together in a spirit of mutual and close cooperation. This cooperation should be without prejudice to the Agency's independence.

(9) To ensure better governance and functioning of the Agency's Management Board, a number of provisions in Regulation (EC) No 168/2007 should be amended.

(10) Given the important role of the Management Board, its members should be independent and have sound knowledge in the fundamental rights area as well as appropriate management experience, including administrative and budgetary skills.

(11) It should also be clarified that, while Management Board members' and alternate members' terms cannot be renewed consecutively, it should be possible to reappoint a former member or alternate member for one more non-consecutive term. If, on the one hand, not allowing consecutive renewals is justified to ensure their independence, on the other hand, allowing a reappointment for one more non-consecutive term would make it easier for Member States to appoint suitable members meeting all the requirements.

(12) With regard to the replacement of Management Board members or alternate members, it should be clarified that in all cases of termination of the term of office before the expiry of the five-year period, not only in case of loss of independence, but also in other cases such as in case of resignation or death, the new member's or alternate member's term will complete his or her predecessor's five-year term, unless the remaining term is less than two years, in which case a new five-year term may run afresh.

(13) To align with the situation within the Union institutions, the Agency's Management Board should be given the powers of the appointing authority. Except for the appointment of the Director, those powers should be delegated to the Director. The Management Board should exercise appointing authority powers regarding staff of the Agency in exceptional circumstances only.

(14) To avoid stalemates and simplify the voting proceedings for the election of the Executive Board members, it should be provided that the Management Board elects them by a majority of the members of the Management Board with voting rights.

(15) To further align Regulation (EC) No 168/2007 with the Common Approach and strengthen the Management Board's capacity to supervise the administrative, operational and budgetary management of the Agency, it is necessary to attribute additional tasks to the Management Board and to further specify the tasks attributed to the Executive Board. The additional tasks of the Management Board should include adopting a security strategy, including rules on the exchange of EU classified information, a communication strategy, and rules for the prevention and management of conflicts of interest in respect of its members and of those of the Scientific Committee. It should be made clear that the Executive Board's task to supervise the preparatory work for the decisions to be adopted by the Management Board entail scrutinising budgetary and human resources matters. In addition, the Executive Board should be tasked with adopting the anti-fraud strategy prepared by the Director and ensuring adequate follow-up to audit findings and to investigations of the European Anti-Fraud Office (OLAF) or of the European Public Prosecutor's Office (EPPO). Moreover, it should be provided that, where necessary, in case of urgency, the Executive Board may take provisional decisions on behalf of the Management Board.

(16) In order to simplify the existing procedure of replacing the members of the Scientific Committee, the Management Board should be allowed to appoint the person next in line on the reserve list for the remaining term of office where a member needs to be replaced before the end of his or her term.

(17) Given the very selective appointment procedure and the fact that the number of candidates potentially meeting the selection criteria is often low, the term of office of the Agency's Director should be extendable once for up to five years, taking into account in particular his or her performance and the Agency's duties and requirements in the coming years. Moreover, given the importance of the position and the thorough procedure which involves the European Parliament, the Council and the Commission, such procedure should start in the course of the 12 months preceding the end of the Director's term.

(18) Furthermore, to enhance the stability of the Director's mandate and hence that of the Agency's operation, the majority required to propose his or her dismissal should be raised from the current one third to a two-thirds majority of the members of the Management Board. Finally, to specify the Director's overall responsibility for the administrative management of the Agency, it should be provided that it is the Director's responsibility to implement the decisions adopted by the Management Board, to prepare an anti-fraud strategy for the Agency, and to prepare an action plan to follow up on internal or external audit reports and OLAF or EPPO's investigations.

(19) To align Regulation (EC) No 168/2007 with the Common Approach it is necessary to provide that the Commission should commission the evaluation of the Agency every five years.

(20) Regulation (EC) No 168/2007 should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

*Article 1*

*Amendments to Council Regulation (EC) No 168/2007*

Council Regulation (EC) No 168/2007 is amended as follows:

(1) Article 2 is replaced by the following:

'*Article 2*

*Objective*

The objective of the Agency shall be to provide the relevant Union institutions, bodies, offices and agencies and the Member States when implementing Union law with assistance and expertise relating to fundamental rights in order to support them when they take measures or formulate courses of action within their respective spheres of competence to fully respect fundamental rights.';

(2) Article 3 is replaced by the following:

'*Article 3*

*Scope*

1. The Agency shall carry out its tasks for the purpose of meeting the objective set out in Article 2 within the competences of the Union.

2. In carrying out its tasks, the Agency shall refer to fundamental rights as referred to in Article 6 of the Treaty on European Union (TEU).

3. The Agency shall deal with fundamental rights issues in the Union and the Member States when implementing Union law, except for Union or Member States' acts or activities in relation with or in the framework of the common foreign and security policy.';

(3) Article 4 is amended as follows:

(a) paragraph 1 is amended as follows:

(i) point (a) is replaced by the following:

'(a) collect, record, analyse and disseminate relevant, objective, reliable and comparable information and data, including results from research and monitoring communicated to it by Member States, Union institutions, bodies, offices and agencies, research centres, national bodies, non-governmental organisations, third countries and international organisations, in particular by the competent bodies of the Council of Europe;';

(ii) points (c) and (d) are replaced by the following:

'(c) carry out, cooperate with or encourage scientific research and surveys, preparatory studies and feasibility studies, including, where appropriate and compatible with its priorities and its annual and multiannual work programmes, at the request of the European Parliament, the Council or the Commission;

(d) formulate and publish conclusions and opinions on specific thematic topics, for the Union institutions and the Member States when implementing Union law, either on its own initiative or at the request of the European Parliament, the Council or the Commission;';

(b) paragraph 2 is replaced by the following:

'2. The conclusions, opinions and reports referred to in paragraph 1 may concern proposals from the Commission under Article 293 of the Treaty on the Functioning of the European Union (TFEU) or positions taken by the institutions in the course of legislative procedures only where a request by the respective institution has been made in accordance with paragraph 1, point (d). They shall not deal with the legality of acts within the meaning of Article 263 TFEU or with the question of whether a Member State has failed to fulfil an obligation under the Treaties within the meaning of Article 258 TFEU.';

(c) the following paragraphs are added:

'3. The Scientific Committee shall be consulted before adoption of the report referred to in paragraph 1, point (e);

4. The Agency shall submit the reports referred to in paragraph 1, points (e) and (g) no later than 15 June each year to the European Parliament, the Council, the Commission, the Court of Auditors, the European Economic and Social Committee and the Committee of the Regions.';

(4) Article 5 is replaced by the following:

'*Article 5*
*Areas of activity*

The Agency shall carry out its tasks on the basis of its annual and multiannual work programmes, which shall be in accordance with the available financial and human resources. This shall be without prejudice to the responses of the Agency to requests from the European Parliament, the Council or the Commission under Article 4(1), points (c) and (d) outside the areas determined by the annual and multiannual work programmes, provided that its financial and human resources so permit.';

(5) the following Article is inserted:

'*Article 5a*
*Annual and multiannual programming*

1. Each year the Director shall draw up a draft programming document, containing in particular the annual and multiannual work programmes, in accordance with Article 32 of Commission Delegated Regulation (EU) 2019/715*.

2. The Director shall submit the draft programming document to the Management Board. The Director shall submit the draft programming document to the European Parliament, the Council and the Commission no later than 31 January each year, as endorsed by the Management Board. In the Council, the competent preparatory body shall discuss the draft multiannual work programme and may invite the Agency to present that draft.

3. The Director shall also submit the draft programming document to the national liaison officers referred to in Article 8(1) and to the Scientific Committee no later than 31 January each year with a view to allowing the relevant Member States and the Scientific Committee to issue their opinions on the draft.

4. In light of the outcome of the discussion within the competent Council preparatory body and of the opinions received from the Commission, the Member States and the Scientific Committee, the Director shall submit the draft programming document to the Management Board for adoption. The Director shall submit the adopted programming document to the European Parliament, the Council, the Commission and the national liaison officers referred to in Article 8(1).

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* Commission Delegated Regulation (EU) 2019/715 of 18 December 2018 on the framework financial regulation for the bodies set up under the TFEU and Euratom Treaty and referred to in Article 70 of Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council (OJ L 122, 10.5.2019, p. 1).';

(6) in Article 6(2), point (a) is replaced by the following:

'(a) Union institutions, bodies, offices and agencies, as well as the bodies, offices and agencies of the Member States;';

(7) Article 7 is replaced by the following:

'*Article 7*
*Relations with relevant Union bodies, offices and agencies*

The Agency shall ensure appropriate coordination with relevant Union bodies, offices and agencies. The terms of cooperation shall be laid down in memoranda of understanding where appropriate.';

(8) Article 8 is amended as follows:

(a) paragraph 1 is replaced by the following:

'1. Each Member State shall nominate a government official as a national liaison officer.

The national liaison officer shall be the main contact point for the Agency in the Member State.

The Agency and the national liaison officers shall work together in a spirit of mutual and close cooperation.

The Agency shall communicate to the national liaison officers all documents drawn up in accordance with Article 4(1).';

(b) paragraph 3 is replaced by the following:

'3. The administrative arrangements for cooperation pursuant to paragraph 2 shall comply with Union law and shall be adopted by the Management Board on the basis of the draft submitted by the Director after the Commission has delivered an opinion. Where the Commission expresses its disagreement with those arrangements the Management Board shall re-examine and adopt them, with amendments where necessary, by a two-thirds majority of all members.';

(9) Article 9 is replaced by the following:

'*Article 9*
*Cooperation with the Council of Europe*

In order to avoid duplication and in order to ensure complementarity and added value, the Agency shall coordinate its activities with those of the Council of Europe, particularly with regard to its annual and multiannual work programmes and cooperation with civil society in accordance with Article 10.

To that end, the Union shall, in accordance with the procedure provided for in Article 218 TFEU, enter into an agreement with the Council of Europe for the purpose of establishing close cooperation between the latter and the Agency. That agreement shall include the appointment of an independent person by the Council of Europe to sit on the Agency's Management Board and on its Executive Board, in accordance with Articles 12 and 13.';

(10) in Article 10(4), point (a) is replaced by the following:

'(a) make suggestions to the Management Board on the annual and multiannual work programmes to be adopted pursuant to Article 5a;';

(11) Article 12 is amended as follows:

(a) paragraph 1 is amended as follows

(i) the introductory part is replaced by the following:

'1. The Management Board shall be composed of persons with sound knowledge in the field of fundamental rights and with appropriate experience in the management of public or private sector organisations, including administrative and budgetary skills, as follows:';

(ii) the following subparagraph is added:

'The Member States, the Commission and the Council of Europe shall endeavour to achieve an equal representation of women and men on the Management Board.';

(b) paragraphs 3, 4 and 5 are replaced by the following:

'3. The term of office of the members and alternate members of the Management Board shall be five years. A former member or alternate member may be reappointed for one more non-consecutive term.

4. Apart from normal replacement or death, the term of office of the member or the alternate member shall end only when he or she resigns. However, where a member or an alternate member no longer meets the criteria of independence, he or she shall resign forthwith and shall notify the Commission and the Director. In those cases apart from normal replacement, the party concerned shall appoint a new member or a new alternate member for the remaining term of office. The party concerned shall also appoint a new member or a new alternate member for the remaining term of office if the Management Board has established, based on a proposal of one third of its members or of the Commission, that the respective member or alternate member no longer meets the criteria of independence. Where the remaining term of office is less than two years, the term of office of the new member or alternate member may be extended to a full term of five years.

5. The Management Board shall elect its Chairperson and Vice-Chairperson and the other two members of the Executive Board referred to in Article 13(1) from its members appointed pursuant to paragraph 1, point (a) of this Article to serve for a two-and-a-half year term, which may be renewed once.

The Management Board's Chairperson and Vice-Chairperson shall be elected by a majority of two thirds of the members of the Management Board referred to in paragraph 1, points (a) and (c) of this Article. The other two members of the Executive Board referred to in Article 13(1) shall be elected by a majority of the members of the Management Board referred to in paragraph 1, points (a) and (c) of this Article.';

(c) paragraph 6 is amended as follows:

(i) points (a) and (b) are replaced by the following:

'(a) adopt the Agency's annual and multiannual work programmes;

(b) adopt the annual reports referred to in Article 4(1), points (e) and (g), comparing, in the latter one, in particular, the results achieved with the objectives of the annual and multiannual work programmes;';

(ii) point (e) is replaced by the following:

'(e) in accordance with paragraphs 7a and 7b of this Article, exercise, with respect to the staff of the Agency, the powers conferred by the Staff Regulations of Officials of the European Union (the "Staff Regulations") and by the Conditions of Employment of Other Servants of the Union (the "Conditions of Employment") laid down in Council Regulation (EEC, Euratom, ECSC) No 259/68* on the appointing authority and on the authority empowered to conclude a contract of employment, respectively ("the appointing authority powers");

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* OJ L 56, 4.3.1968, p. 1.';

(iii) point (i) is replaced by the following:

'(i) adopt the implementing rules for giving effect to the Staff Regulations and the Conditions of Employment, in accordance with Article 110(2) of the Staff Regulations;';

(iv) the following points are added:

'(m) adopt a security strategy, including rules on the exchange of EU classified information;

(n) adopt rules for the prevention and management of conflicts of interest in respect of its members as well as of the Scientific Committee;

(o) adopt and regularly update the communication strategy referred to in Article 4(1), point (h).';

(d) the following paragraphs are inserted:

'7a The Management Board shall adopt, in accordance with Article 110(2) 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 Director and defining the conditions under which that delegation of powers can be suspended. The Director shall be authorised to sub-delegate those powers.

7b 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 Director and those sub-delegated by the Director and exercise them itself or delegate them to one of its members or to a staff member other than the Director.';

(e) paragraphs 8, 9 and 10 are replaced by the following:

'8. As a general rule, decisions by the Management Board shall be taken by a majority of all members.

Decisions referred to in paragraph 6, points (a) to (e), (g), (k) and (l) shall be taken by a two-thirds majority of all members.

Decisions referred to in Article 25(2) shall be taken by unanimity.

Each member of the Management Board, or in his or her absence his or her alternate, shall have one vote. The Chairperson shall have the casting vote.

The person appointed by the Council of Europe may vote only on decisions referred to in paragraph 6, points (a), (b) and (k).

9. The Chairperson shall convene the Management Board twice a year, without prejudice to extraordinary meetings. The Chairperson shall convene extraordinary meetings on his or her own initiative or at the request of the Commission or of at least one third of the members of the Management Board.

10. The Chairperson or Vice-Chairperson of the Scientific Committee and the Director of the European Institute for Gender Equality may attend meetings of the Management Board as observers. The Directors of other relevant Union agencies and bodies as well as of other international bodies mentioned in Articles 8 and 9 may also attend as observers when invited to do so by the Executive Board.';

(12) Article 13 is replaced by the following:

'*Article 13*
*Executive Board*

1. The Management Board shall be assisted by an Executive Board. The Executive Board shall supervise the necessary preparatory work for the decisions to be adopted by the Management Board. In particular, it shall scrutinise budgetary and human resources matters.

2. The Executive Board shall also:

(a) review the Agency's programming document referred to in Article 5a, based on a draft prepared by the Director, and submit it to the Management Board for adoption;

(b) review the Agency's draft annual budget and submit it to the Management Board for adoption;

(c) review the draft annual report on the Agency's activities and submit it to the Management Board for adoption;

(d) adopt an anti-fraud strategy for the Agency, proportionate to the fraud risks, taking into account the costs and benefits of the measures to be implemented and based on a draft prepared by the Director;

(e) ensure adequate follow-up to the findings and recommendations stemming from the internal or external audit reports and evaluations, as well as from investigations of the European Anti-Fraud Office (OLAF) or of the European Public Prosecutor's Office (EPPO);

(f) without prejudice to the responsibilities of the Director set out in Article 15(4), assist and advise him or her in the implementation of the decisions of the Management Board with a view to reinforcing the supervision of administrative and budgetary management.

3. Where necessary, for reasons of urgency, the Executive Board may take provisional decisions on behalf of the Management Board, including on the suspension of the delegation of the appointing authority powers in accordance with the conditions referred to in Article 12(7a) and (7b) and on budgetary matters.

4. The Executive Board shall be composed of the Chairperson and the Vice-Chairperson of the Management Board, two other members of the Management Board elected by the Management Board in accordance with Article 12(5) and one of the representatives of the Commission in the Management Board.

   The person appointed by the Council of Europe in the Management Board may participate in the meetings of the Executive Board.

5. The Executive Board shall be convened by the Chairperson. It may also be convened at the request of one of its members. It shall adopt its decisions by a majority of its members present. The person appointed by the Council of Europe may vote on items related to the decisions on which that person has a right to vote in the Management Board in accordance with Article 12(8).

6. The Director shall take part in the meetings of the Executive Board, without voting rights.';

(13) Article 14 is amended as follows:

(a) paragraph 1 is replaced by the following:

'1. The Scientific Committee shall be composed of 11 independent persons, highly qualified in the field of fundamental rights, with adequate competences in scientific quality and research methodologies. The Management Board shall appoint the 11 members and approve a reserve list established by order of merit following a transparent call for applications and selection procedure and after having consulted the competent committee of the European Parliament. The Management Board shall ensure even geographical representation and shall endeavour to achieve an equal representation of women and men on the Scientific Committee. The members of the Management Board shall not be members of the Scientific Committee. The rules of procedure referred to in Article 12(6), point (g) shall lay down the detailed conditions governing the appointment of the Scientific Committee.';

(b) paragraph 3 is replaced by the following:

'3. The members of the Scientific Committee shall be independent. They may be replaced only at their own request or in the event of their being permanently prevented from fulfilling their duties. However, where a member no longer meets the criteria of independence, he or she shall resign forthwith and shall notify the Commission and the Director. Alternatively, the Management Board may declare, on a proposal of one third of its members or of the Commission, a lack of independence and revoke the appointment of the person concerned. The Management Board shall appoint the first available person in line on the reserve list for the remaining term of office. Where the remaining term of office is less than two years, the term of office of the new member may be extended to a full term of five years. The list of members of the Scientific Committee shall be made public and shall be updated by the Agency on its website.';

(c) in paragraph 5, the following subparagraph is added:

'The Scientific Committee shall in particular advise the Director and the Agency on the scientific research methodology applied in the Agency's work.';

(14) Article 15 is amended as follows:

(a) paragraphs 3 and 4 are replaced by the following:

'3. The Director's term of office shall be five years.

In the course of the 12 months preceding the end of that five-year period, the Commission shall carry out an evaluation in order to assess in particular:

(a) the performance of the Director;

(b) the Agency's duties and requirements in the coming years.

The Management Board, acting on a proposal from the Commission, taking into account the evaluation, may extend the term of office of the Director once for no more than five years.

The Management Board shall inform the European Parliament and the Council about its intention to extend the Director's term of office. Within a period of one month before the Management Board formally takes its decision to extend that term of office, the Director may be asked to make a declaration before the competent committee of the European Parliament and to answer questions from its members.

If his or her term of office is not extended, the Director shall remain in office until the appointment of his or her successor.

4. The Director shall be responsible for:

(a) the performance of the tasks referred to in Article 4 and in particular the preparation and publication of the documents drawn up in accordance with Article 4(1), points (a) to (h) in cooperation with the Scientific Committee;

(b) the preparation and implementation of the Agency's programming document referred to in Article 5a;

(c) matters of day-to-day administration;

(d) the implementation of decisions adopted by the Management Board;

(e) the implementation of the Agency's budget, in accordance with Article 21;

(f) the implementation of effective monitoring and evaluation procedures relating to the performance of the Agency against its objectives in accordance with professionally recognised standards and performance indicators;

(g) the preparation of an action plan to follow up on the conclusions of retrospective evaluations assessing the performance of programmes and activities that entail significant spending, in accordance with Article 29 of Delegated Regulation (EU) 2019/715;

(h) reporting annually to the Management Board on the results of the monitoring and evaluation system;

(i) the preparation of an anti-fraud strategy for the Agency and its presentation to the Executive Board for approval;

(j) the preparation of an action plan to follow up on the conclusions of internal or external audit reports and evaluations, as well as investigations by OLAF and reporting on progress to the Commission and the Management Board;

(k) cooperation with national liaison officers;

(l) cooperation with civil society, including coordination of the Fundamental Rights Platform in accordance with Article 10.';

(b) paragraph 7 is replaced by the following:

'7. The Director may be dismissed before his or her term has expired by the decision of the Management Board, on the basis of a proposal of two thirds of its members or of the Commission, in the event of misconduct, unsatisfactory performance or recurring or serious irregularities.';

(15) in Article 17, paragraph 3 is replaced by the following:

'3. Where the Agency takes decisions under Article 8 of Regulation (EC) No 1049/2001, a complaint may be lodged with the Ombudsman or an action may be brought in the Court of Justice of the European Union (Court of Justice), as provided for in Articles 228 and 263 TFEU respectively.';

(16) Article 19 is replaced by the following:

'*Article 19*
*Review by the Ombudsman*

The operations of the Agency shall be subject to the supervision of the Ombudsman in accordance with Article 228 TFEU.';

(17) Article 20 is amended as follows:

(a) in paragraph 3, the first subparagraph is replaced by the following:

'3. The revenue of the Agency shall, without prejudice to other resources, comprise a subsidy from the Union, entered in the general budget of the Union (Commission section).';

(b) paragraph 7 is replaced by the following:

'7. On the basis of the estimate, the Commission shall enter in the preliminary draft general budget of the Union the estimates it considers 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 Article 314 TFEU.';

(18) Article 24 is replaced by the following:

'*Article 24*
*Staff*

1. The Staff Regulations and the Conditions of Employment and the rules adopted jointly by the Union institutions for the purpose of applying the Staff Regulations and the Conditions of Employment shall apply to the staff of the Agency and its Director.

2. The Management Board may adopt provisions to allow national experts from Member States to be employed on secondment at the Agency.';

(19) Article 26 is replaced by the following:

'*Article 26*
*Privileges and immunities*

Protocol No 7 on the Privileges and Immunities of the European Union, annexed to the TEU and to the TFEU, shall apply to the Agency.';

(20) in Article 27, paragraph 3 is replaced by the following:

'3. The Court of Justice shall have jurisdiction in actions brought against the Agency under the conditions provided for in Articles 263 and 265 TFEU.';

(21) in Article 28, paragraphs 2 and 3 are replaced by the following:

'2. The participation referred to in paragraph 1 and the relevant modalities shall be determined by a decision of the relevant Association Council, taking into account the specific status of each country. The decision shall indicate in particular the nature, extent and manner in which those countries will participate in the Agency's work, within the framework set in Articles 4 and 5, including provisions relating to participation in initiatives undertaken by the Agency, to the financial contribution and to staff. The decision shall comply with this Regulation and with the Staff Regulations and the Conditions of Employment. The decision shall provide that the participating country may appoint an independent person fulfilling the qualifications for persons referred to in Article 12(1), point (a) as observer to the Management Board without a right to vote. Upon the decision of the Association Council the Agency may deal with fundamental rights issues within the scope of Article 3(1) in the relevant country, to the extent necessary for the gradual alignment to Union law of the country concerned.

3. The Council, acting unanimously on a proposal by the Commission, may decide to invite a country with which a Stabilisation and Association Agreement has been concluded by the Union to participate in the Agency as an observer. If it does so, paragraph 2 shall apply accordingly.';

(22) Article 29 is deleted;

(23) Article 30 is amended as follows:

(a) the title is replaced by the following:

'*Evaluations and review*';

(b) paragraphs 3 and 4 are replaced by the following:

'3. By … [5 years after the entry into force of this amending Regulation], and every five years thereafter, the Commission shall commission an evaluation to assess in particular the impact, effectiveness and efficiency of the Agency and its working practices. The evaluation shall take into account the views of the Management Board and other stakeholders at both Union and national levels.

4. On the occasion of every second evaluation as referred to in paragraph 3, there shall also be an assessment of the results achieved by the Agency having regard to its objectives, mandate and tasks. The evaluation may, in particular, address the possible need to modify the mandate of the Agency, and the financial implications of any such modifications.

5. The Commission shall submit the conclusions of the evaluation referred to in paragraph 3 to the Management Board. The Management Board shall examine the conclusions of the evaluation and issue to the Commission such recommendations as may be necessary regarding changes in the Agency, its working practices and the scope of its mission.

6. The Commission shall report to the European Parliament and the Council on the findings of the evaluation referred to in paragraph 3 and the recommendations of the Management Board referred to in paragraph 5. The findings of that evaluation and those recommendations shall be made public.';

(24) Article 31 is deleted.

*Article 2*

*Entry into force*

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

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at ...,

*For the Council*

*The President*

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