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General Secretariat

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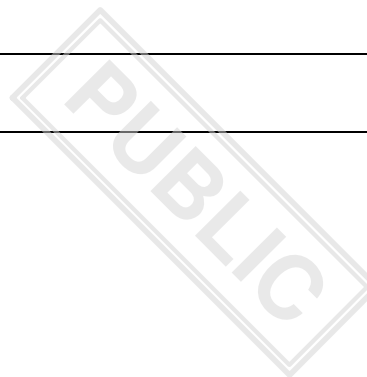
WORKING PAPER

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MEETING DOCUMENT

From:	Presidency
To:	Delegations
N° Cion doc.:	8742/16 + ADD 1
Subject:	Proposal for a Regulation of the European Parliament and of the Council on the European Union Agency for Asylum and repealing Regulation (EU) No 439/2010

For the purposes of their meeting on 20 June, JHA Counsellors will find attached compromise suggestions for their approval for Articles 47a, 48, 48a, 54-a, 54-ab, 46(na) and 30(4a).



	<i>Article 47a</i>		
	<p><i>1. A Fundamental Rights Officer shall be appointed by the Management Board on a proposal from the Executive Director, following consultation with and the Consultative Forum. The Fundamental Rights Officer shall have the necessary qualifications and experience in the field of fundamental rights and asylum. The Fundamental Rights Officer shall be responsible for drawing up the Fundamental Rights Strategy, monitoring compliance with fundamental rights and promoting the respect of fundamental rights by the Agency.</i></p>		<p><i>Outcome of technical discussions:</i></p> <p>1. A Fundamental Rights Officer shall be appointed by the Management Board from a selection of candidates proposed by the Executive Director. The Fundamental Rights Officer shall have the necessary qualifications and experience in the field of fundamental rights and asylum.</p> <p>2. The Fundamental Rights Officer shall be independent in the performance of his or her duties and shall report directly to the Management Board [...].</p> <p>3. The Fundamental Rights Officer shall be responsible for ensuring the Agency's compliance with fundamental rights in the course of its activities and promoting the respect of fundamental rights by the Agency. The Fundamental Rights Officer</p>

			shall also be responsible for implementing the complaints mechanism.
	<p><i>2. The Fundamental Rights Officer shall be independent in the performance of his or her duties, shall report directly to the Management Board and shall cooperate with the Consultative Forum. The Fundamental Rights Officer shall report to the Consultative Forum on a regular basis and as such contribute to the mechanism for monitoring fundamental rights referred to in Article 54a.</i></p>		<p><i>Outcome of technical discussions:</i></p> <p>4. The Fundamental Rights Officer shall cooperate closely with the Consultative Forum and shall be invited to the meetings of the Consultative Forum to report on his or her activities.</p>

	<p><i>3. The Fundamental Rights Officer shall be consulted, inter alia, on the operational plans drawn up in accordance with Article 19, on the operational activities organised by or with the involvement of the Agency, codes of conduct, cooperation with third countries, the withdrawal of the financing, the suspension or the termination of an activity of the Agency and training curricula. The Fundamental Rights Officer shall have access to all information concerning respect for fundamental rights, in relation to all the activities of the Agency, including by carrying out on-site visits to any operational activity carried out by the Agency or where the Agency participates, including in third countries. The Fundamental Rights Officer shall be responsible for establishing, further developing and implementing the complaints mechanism pursuant to Article 54c.</i></p>	<p><i>5. The Fundamental Rights Officer shall be consulted on, inter alia, the operational plans, the evaluation of the Agency's operational and technical assistance, the code of conduct, [...] the suspension or the termination of the deployment of an asylum support team in accordance with Article 19(5) and the European asylum curriculum. The Fundamental Rights Officer shall have access to all information concerning respect for fundamental rights in relation to all the activities of the Agency, including by organising visits where the Agency is carrying out operational activities, and with the consent of the Member State concerned [...].</i></p> <p><i>Counsellors are informed that the EP agreed to give up the reference to cooperation with third countries and agreed to include "with the consent of the MS concerned".</i></p>
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	<i>4. The Agency shall ensure that the Fundamental Rights Officer has the sufficient staff and resources to carry out his or her tasks. The Fundamental Rights Officer shall have control over his or her budget.</i>		<i>EP agreed to delete this provision.</i>
<i>Article 48</i> Consultative Forum		<i>Article 48</i> Consultative Forum	
<i>Amendment 87</i>			
1. The Agency shall maintain a close dialogue with relevant civil society organisations and relevant competent bodies operating in the field of asylum policy at local, regional, national, Union or international level. For that purpose, the Agency shall set up a Consultative Forum.	1. The Agency shall maintain a close dialogue with relevant civil society organisations and relevant competent bodies operating in the field of asylum policy at local, regional, national, Union or international level. For that purpose, the Agency shall set up a Consultative Forum.	1. The Agency shall maintain a close dialogue with relevant civil society organisations and relevant competent bodies operating in the field of asylum policy at local, regional, national, Union or international level. For that purpose, the Agency shall set up a Consultative Forum.	<i>Outcome of technical discussions:</i> 1. The Agency shall maintain a close dialogue with relevant civil society organisations and relevant competent bodies operating in the field of asylum policy at local, regional, national, Union or international level. For that purpose, the Agency shall set up a Consultative Forum.

2. The Consultative Forum shall constitute a mechanism for the exchange of information and sharing of knowledge. It shall ensure a close dialogue between the Agency and relevant organisations or bodies as referred to in paragraph 1 and shall assist the Executive Director and the Management Board in matters covered by this Regulation.	2. The Consultative Forum shall constitute a mechanism for the exchange of information and sharing of knowledge. It shall ensure a close dialogue between the Agency and relevant organisations or bodies as referred to in paragraph 1 and shall assist the Executive Director and the Management Board in matters covered by this Regulation.	2. The Consultative Forum shall constitute a mechanism for the exchange of information and sharing of knowledge. It shall ensure a close dialogue between the Agency and relevant organisations or bodies as referred to in paragraph 1 [...].	<i>Outcome of technical discussions:</i> 2. The Consultative Forum shall constitute a mechanism for the exchange of information and sharing of knowledge. It shall ensure a close dialogue between the Agency and relevant organisations or bodies as referred to in paragraph 1 [...].
3. The Agency shall invite the European Union Agency for Fundamental Rights, the European Agency for the Management of Operational Cooperation at the External Borders of the Member States, UNHCR and other relevant organisations or bodies as referred to in paragraph 1.	3. The Agency shall invite the European Union Agency for Fundamental Rights, the European Agency for the Management of Operational Cooperation at the External Borders of the Member States, UNHCR and other relevant organisations or bodies as referred to in paragraph 1.	3. The Agency shall invite the European Union Agency for Fundamental Rights, the European Border and Coast Guard Agency [...], UNHCR and other relevant organisations or bodies as referred to in paragraph 1.	<i>Outcome of technical discussions:</i> 3. The Agency shall invite the European Union Agency for Fundamental Rights, the European Border and Coast Guard Agency [...], UNHCR and other relevant organisations or bodies as referred to in paragraph 1.

<p>On a proposal by the Executive Director, the Management Board shall decide on the composition and working methods of the Consultative Forum, including thematic or geographic-focused consultation groups, and the modalities of transmission of information to the Consultative Forum.</p>	<p>[...]On a proposal by the Executive Director, the Management Board shall decide on the composition of the Consultative Forum, and the modalities of transmission of information to the Consultative Forum. The composition and size of the Consultative Forum shall pay due regard to the efficiency of its works. <i>The Consultative Forum shall, after consulting the Management Board and the Executive Director, define its working methods including thematic or geographic-focused working groups as deemed necessary and useful.</i></p>	<p>On a proposal by the Executive Director, the Management Board shall decide on the composition and working methods of the Consultative Forum, including thematic or geographic-focused consultation groups, and the modalities of transmission of information to the Consultative Forum.</p>	<p><i>Outcome of technical discussions:</i></p> <p>On a proposal by the Executive Director, the Management Board shall decide on the composition [...] of the Consultative Forum, including thematic or geographic-focused consultation groups, and the modalities of 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.</p> <p><i>To be added in a recital: "The composition and size of the Consultative Forum shall have due regard for the efficiency of its activities."</i></p>
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4. The Consultative Forum shall assist the Executive Director and the Management Board in matters related to asylum, in accordance with specific needs in areas identified as a priority for the Agency's work.	4. The Consultative Forum shall advise the Executive Director and the Management Board in matters related to asylum, in accordance with specific needs in areas identified as a priority for the Agency's work.	4. The Consultative Forum shall advise the Executive Director and the Management Board in matters related to asylum, in accordance with specific needs in areas identified as a priority for the Agency's work.	<i>Outcome of technical discussions:</i> 4. The Consultative Forum shall advise the Executive Director and the Management Board in matters related to asylum, in accordance with specific needs in areas identified as a priority for the Agency's work.
	<i>4a. The Consultative Forum shall, in particular, be consulted on the establishment of the mechanism for monitoring referred to in Article 13, further development and implementation of the Fundamental Rights Strategy, codes of conduct, working arrangements with third countries, the complaint mechanism referred to in Article 54c, operational plans and common core curricula.</i>		<i>Moved to paragraph 5a.</i>
5. The Consultative Forum shall, in particular:	5. The Consultative Forum shall, in particular:	5. The Consultative Forum shall, in particular:	<i>Outcome of technical discussions:</i> 5. The Consultative Forum shall, in particular:

(a) make suggestions to the Management Board on the annual and multi-annual programming referred to in Article 41;	(a) make suggestions to the Management Board on the annual and multi-annual programming referred to in Article 41;	(a) make suggestions to the Management Board on the annual and multi-annual programming referred to in Article 41;	(a) make suggestions to the Management Board on the annual and multi-annual programming referred to in Article 41;
(b) provide feedback to the Management Board and suggest measures as follow-up to the annual report on the situation of asylum in the Union referred to in Article 65; and	(b) provide feedback to the Management Board and suggest measures as follow-up to the annual report on the situation of asylum in the Union referred to in Article 65; and	(b) provide feedback to the Management Board and suggest measures as follow-up to the annual report on the situation of asylum in the Union referred to in Article 65; and	(b) provide feedback to the Management Board and suggest measures as follow-up to the annual report on the situation of asylum in the Union referred to in Article 65; and
(c) communicate to the Executive Director and the Management Board conclusions and recommendations of conferences, seminars and meetings, as well as on findings from studies or field work carried out by any of the member organisations or bodies of the Consultative Forum which is relevant to the work of the Agency.	(c) communicate to the Executive Director and the Management Board conclusions and recommendations of conferences, seminars and meetings, as well as on findings from studies or field work carried out by any of the member organisations or bodies of the Consultative Forum which is relevant to the work of the Agency.	(c) communicate to the Executive Director and the Management Board conclusions and recommendations of conferences, seminars and meetings, as well as on findings from studies or field work carried out by any of the member organisations or bodies of the Consultative Forum which is relevant to the work of the Agency.	(c) communicate to the Executive Director and the Management Board conclusions and recommendations of conferences, seminars and meetings, as well as on findings from studies or field work carried out by any of the member organisations or bodies of the Consultative Forum which is relevant to the work of the Agency.

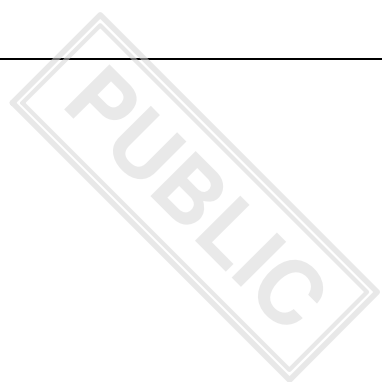


			<i>Outcome of technical discussions:</i> (5a)The Consultative Forum shall be consulted on the establishment and implementation of the Fundamental Rights Strategy, the code of conduct, the complaint s mechanism and the European asylum curriculum.
	<i>5a. The Management Board shall ensure that adequate human and financial resources are allocated to the Consultative Forum.</i>		<i>The EP amendment to be addressed in a recital.</i>
<i>Amendment 92</i>			
	<i>Article 54c Complaints mechanism</i>		<i>Article 48a Complaints mechanism</i> <i>To follow Article 48</i>

	<p><i>1. The Agency shall, in cooperation with the Fundamental Rights Officer, take the necessary measures to set up a complaint mechanism in accordance with this Article to monitor and ensure the respect for fundamental rights in all the activities of the Agency.</i></p>		<p><i>Outcome of technical discussions:</i></p> <p>1. The Agency shall [...] take the necessary measures to set up a complaints mechanism in accordance with this Article to ensure the respect for fundamental rights in all the activities of the Agency.</p>
	<p><i>2. Any person who is directly affected by the actions of staff involved in operational activities organised by or with the involvement of the Agency, 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.</i></p>		<p><i>Outcome of technical discussions:</i></p> <p>2. Any person who is directly affected by the actions of experts in the asylum support teams, and who considers that his or her fundamental rights have been breached due to those actions, or any party representing such a person, may submit a complaint in writing to the Agency.</p>



	<p><i>3. Only substantiated complaints involving concrete fundamental rights violations shall be admissible. Complaints which are anonymous, malicious, frivolous, vexatious, hypothetical or inaccurate shall be considered inadmissible.</i></p>	<p><i>Outcome of technical discussions:</i></p> <p>3. Only substantiated complaints involving concrete fundamental rights violations shall be admissible. Complaints which challenge any decision of a national authorities on an individual application for international protection shall be inadmissible. Complaints which are anonymous, malicious, frivolous, vexatious, hypothetical or inaccurate shall also be inadmissible.</p>
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	<p><i>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.</i></p>	<p><i>Outcome of technical discussions:</i></p> <p>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 experts of the asylum support 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.</p>
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	<p><i>5. In accordance with the right to good administration, where 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. Where a complaint is forwarded to national authorities or bodies, the complainant shall be provided with their contact details. Where a complaint is not admissible, complainants shall be informed of the reasons for the inadmissibility and, if possible, provided with further options for addressing their concerns.</i></p>		<p><i>Outcome of technical discussions:</i></p> <p>5. In accordance with the right to good administration, where a complaint is admissible, the complainant 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. Where a complaint is forwarded to a national authority or body, the complainant shall be provided with the contact details of that authority or body. Where a complaint is inadmissible, the complainant shall be informed of the reasons for the inadmissibility and, where possible, provided with further options for addressing his or her concerns.</p>
	<p><i>Any decision shall be in written form and reasoned.</i></p>		<p>Any decision shall be in written form and reasoned.</p>



	<p><i>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 given by the Agency to a complaint, including disciplinary measures as necessary.</i></p>		<p><i>Outcome of technical discussions:</i></p> <p>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.</p>
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	<p><i>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.</i></p>	<p><i>Outcome of technical discussions:</i></p> <p>6a. Where 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.</p>
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	<p><i>7. In the case of a complaint concerning an expert of a host Member State or a member of the teams, including seconded members of the teams or seconded national experts, 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 to a complaint within a determined time period, and if necessary, at regular intervals thereafter. The Agency shall follow-up the matter where no report is received from the relevant Member State.</i></p>		<p><i>Outcome of technical discussions:</i></p> <p>7. In the case of a complaint concerning an expert of a Member State , including seconded national experts, 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 a complaint within a determined time period, and if necessary, at regular intervals thereafter. The Agency shall follow-up the matter where no report is received from the relevant Member State.</p>
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	<p><i>8. Where an expert deployed by the Agency or a seconded national expert is found to have violated fundamental rights or international protection obligations, the Agency shall request the Member State to remove that expert or seconded national expert immediately from the activity of the Agency or the asylum intervention pool.</i></p>		<p><i>Outcome of technical discussions:</i></p> <p>8. Where an expert deployed by the Agency or a Member State, including a seconded national expert is found to have violated fundamental rights or international protection obligations, the Executive Director shall request the Member State to remove that expert or seconded national expert immediately from the activities of the Agency. In the case of an expert deployed by the Agency, the Executive Director shall remove that expert from the activities of the Agency.</p>
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	9. The Fundamental Rights Officer shall report to the Executive Director and to the Management Board as to the findings and follow-up given to complaints by the Agency and the Member States. The Agency shall include in its annual report information on the complaints mechanism.		<i>Outcome of technical discussions:</i> 9. The Fundamental Rights Officer shall report to the Executive Director and to the Management Board as to the findings and follow-up made by the Agency and the Member States in response to a complaint. The Agency shall include information on the complaints mechanism in its annual report on the situation of asylum in the Union.
			<i>Outcome of technical discussions:</i> 9a. 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

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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.

			<i>This is identical to EBCG 72 (11).</i>
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	<p style="text-align: center;">Article 54a Protection of Fundamental Rights and Fundamental Rights Strategy</p>		<p style="text-align: center;">Article 54-a Protection of Fundamental Rights and Fundamental Rights Strategy</p> <p><i>To be moved before Article 54 on the legal status in Chapter 11.</i></p>
	<p>1. The Agency 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, the 1967 Protocol, the legal norms adopted in the context of the CEAS and obligations related to access to and content of international protection.</p>		<p><i>Outcome of technical discussions:</i></p> <p>1. The Agency shall guarantee the protection of fundamental rights in the performance of its tasks under this Regulation in accordance with relevant Union law, including the Charter and relevant international law, in particular the Geneva Convention. [...]</p>



			<p><i>Outcome of technical discussions:</i></p> <p>1a. The best interests of the child shall be a primary consideration when applying this Regulation.</p> <p><i>This was initially suggested as a new Article 2a under Article 16(2(i) but the suggestion is to place it in this Article instead.</i></p>
	<p>2. For the purpose referred to in paragraph 1, the Agency shall draw up and 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.</p>		<p><i>Outcome of technical discussions:</i></p> <p>2. For the purpose referred to in paragraph 1, the Agency shall, on a proposal of the Fundamental Rights Officer, establish and implement a Fundamental Rights Strategy to ensure respect for fundamental rights in all the activities of the Agency.</p>

<i>Amendment 91</i>			
	<i>Article 54b Code of Conduct</i>		<i>Article 54-ab Code of Conduct</i>
	<p><i>The Agency shall draw up and further develop a Code of Conduct applicable to all experts involved in support operations coordinated by 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 children, unaccompanied minors and other persons in a vulnerable situation, as well as on persons seeking international protection. The Code of Conduct shall be applicable to all persons participating in the activities of the Agency.</i></p>		<p><i>Outcome of technical discussions:</i></p> <p>The Agency shall establish and implement a code of conduct applicable to all experts in the asylum support teams. 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 children, unaccompanied minors and other persons in a vulnerable situation.</p>

Article 46 (na)

		(na) set up teams of experts for the purpose of Articles 13 and 14 which shall be composed of experts from the Agency's own staff, the Commission and, where necessary, the Member States;	<i>Outcome of technical discussions:</i> (na) set up teams of experts for the purpose of Articles 13 and 14 which shall be composed of experts from the Agency's own staff, the Commission and, where necessary, the Member States and, as an observer, UNHCR.
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Article 30(4a):

			<i>Outcome of technical discussions:</i> 4a. By way of derogation from paragraph 4, the Agency may transfer, subject to the informed and freely given consent of the third-country national , the full name of the third-country national identified for the sole purpose
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			<p>of conducting a resettlement procedure, information on the course of the resettlement procedure and information on the outcome of the resettlement procedure to relevant international organisations to the extent necessary to meet that purpose. Such personal data shall not be further processed for any other purpose or transferred onwards.</p>
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