



## Statewatch Analysis

### The Frontex Regulation - Consolidated text after 2011 amendments

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The following presents the Regulation setting up the EU Borders Agency - 'Frontex' - as it will be amended by a number of amendments (the '2011 amendments') recently agreed in principle between the European Parliament and the Council.

In order to make clear at a glance the impact of the 2011 amendments, they have been highlighted in *bold and italics* throughout. Where the 2011 amendments would delete the existing text of the Regulation, the existing text which will be deleted is indicated in brackets and strike-out: ie [~~Community~~].

There might be technical changes to the 2011 amendments before their final adoption. Currently, the European Parliament plenary is due to approve these changes in September 2011, and then they will likely be finally adopted by the Council in September or October. The Regulation will then enter into force 20 days after its publication in the EU *Official Journal*.

The Frontex Regulation was already amended once before, in 2007 (by Regulation 863/2007, which mainly concerned the creation of 'Rapid Border Intervention Teams'). The changes made then have also been integrated into the text of the Regulation, and they are indicated by footnotes.

**COUNCIL REGULATION (EC) No 2007/2004  
of 26 October 2004**

**establishing a European Agency for the Management of Operational Cooperation at  
the External Borders of the Member States of the European Union**

(OJ L 349, 25.11.2004, p. 1)  
*[as amended in 2007 and 2011; original footnotes omitted]*

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Articles 62(2)(a) and 66 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament,

Having regard to the opinion of the European Economic and Social Committee,

Whereas:

(1) Community policy in the field of the EU external borders aims at an integrated management ensuring a uniform and high level of control and surveillance, which is a necessary corollary to the free movement of persons within the European Union and a fundamental component of an area of freedom, security and justice. To this end, the establishment of common rules on standards and procedures for the control of external borders is foreseen.

(2) The efficient implementation of the common rules calls for increased coordination of the operational cooperation between the Member States.

(3) Taking into account the experiences of the External Borders Practitioners' Common Unit, acting within the Council, a specialised expert body tasked with improving the coordination of operational cooperation between Member States in the field of external border management should therefore be established in the shape of a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (hereinafter referred to as the Agency).

(4) The responsibility for the control and surveillance of external borders lies with the Member States. The Agency should facilitate the application of existing and future Community measures relating to the management of external borders by ensuring the coordination of Member States' actions in the implementation of those measures.

(5) Effective control and surveillance of external borders is a matter of the utmost importance to Member States regardless of their geographical position. Accordingly, there is a need for promoting solidarity between Member States in the field of external border management. The establishment of the Agency, assisting Member States with implementing the operational aspects of external border management, including return of third-country nationals illegally present in the Member States, constitutes an important step in this direction.

(6) Based on a common integrated risk analysis model, the Agency should carry out risk analyses in order to provide the Community and the Member States with adequate

information to allow for appropriate measures to be taken or to tackle identified threats and risks with a view to improving the integrated management of external borders.

(7) The Agency should provide training at European level for national instructors of border guards and additional training and seminars related to control and surveillance at external borders and removal of third-country nationals illegally present in the Member States for officers of the competent national services. The Agency may organise training activities in cooperation with Member States on their territory.

(8) The Agency should follow up on the developments in scientific research relevant for its field and disseminate this information to the Commission and to the Member States.

(9) The Agency should manage lists of technical equipment provided by the Member States, thereby contributing to the 'pooling' of material resources.

(10) The Agency should also support Member States in circumstances requiring increased technical and operational assistance at external borders.

(11) In most Member States, the operational aspects of return of third-country nationals illegally present in the Member States fall within the competencies of the authorities responsible for controlling external borders. As there is a clear added value in performing these tasks at European level, the Agency should, subject to the Community return policy, accordingly provide the necessary assistance for organising joint return operations of Member States and identify best practices on the acquisition of travel documents and the removal of third-country nationals illegally present in the territories of the Member States.

(12) For the purpose of fulfilling its mission and to the extent required for the accomplishment of its tasks, the Agency may cooperate with Europol, the competent authorities of third countries and the international organisations competent in matters covered by this Regulation in the framework of working arrangements concluded in accordance with the relevant provisions of the Treaty. The Agency should facilitate the operational cooperation between Member States and third countries in the framework of the external relations policy of the European Union.

(13) Building upon the experiences of the External Borders Practitioners' Common Unit and the operational and training centres specialised in the different aspects of control and surveillance of land, air and maritime borders respectively, which have been set up by Member States, the Agency may itself create specialised branches responsible for dealing with land, air and maritime borders.

(14) The Agency should be independent as regards technical matters and have legal, administrative and financial autonomy. To that end, it is necessary and appropriate that it should be a Community body having legal personality and exercising the implementing powers, which are conferred upon it by this Regulation.

(15) The Commission and the Member States should be represented within a Management Board in order to control effectively the functions of the Agency. The Board should, where possible, consist of the operational heads of the national services responsible for border guard management or their representatives. This Board should be entrusted with the necessary powers to establish the budget, verify its execution, adopt the appropriate financial rules, establish transparent working procedures for decision making by the Agency and appoint the Executive Director and his/her deputy.

(16) In order to guarantee the full autonomy and independence of the Agency, it should be granted an autonomous budget whose revenue comes essentially from a contribution from

the Community. The Community budgetary procedure should be applicable as far as the Community contribution and any other subsidies chargeable to the general budget of the European Union are concerned. The auditing of accounts should be undertaken by the Court of Auditors.

(17) Regulation (EC) No 1073/1999 of the European Parliament and of the Council of 25 May 1999 concerning investigations conducted by the European Anti-Fraud Office (OLAF) should apply without restriction to the Agency, which should accede to the Interinstitutional Agreement of 25 May 1999 between the European Parliament, the Council of the European Union and the Commission of the European Communities concerning internal investigations by the European Anti-Fraud Office (OLAF).

(18) Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents should apply to the Agency.

(19) Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (4) applies to the processing of personal data by the Agency.

(20) The development of the policy and legislation on external border control and surveillance remains a responsibility of the EU institutions, in particular the Council. Close coordination between the Agency and these institutions should be guaranteed.

(21) Since the objectives of this Regulation, namely the need for creating an integrated management of operational cooperation at the external borders of the Member States of the European Union, cannot be sufficiently achieved by the Member States and can therefore be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives.

(22) This Regulation respects the fundamental rights and observes the principles recognised by Article 6(2) of the Treaty on European Union and reflected in the Charter of Fundamental Rights of the European Union.

(23) As regards Iceland and Norway, this Regulation constitutes a development of the Schengen acquis within the meaning of the Agreement concluded by the Council of the European Union and the Republic of Iceland and the Kingdom of Norway concerning the association of those two States with the implementation, application and development of the Schengen acquis, which fall within the area referred to in Article 1, point A of Council Decision 1999/437/EC on certain arrangements for the application of that Agreement. Consequently, delegations of the Republic of Iceland and the Kingdom of Norway should participate as members of the Management Board of the Agency, albeit with limited voting rights. In order to determine the further modalities allowing for the full participation of the Republic of Iceland and the Kingdom of Norway in the activities of the Agency, a further arrangement should be concluded between the Community and these States.

(24) In accordance with Articles 1 and 2 of the Protocol on the position of Denmark annexed to the Treaty on European Union and to the Treaty establishing the European Community, Denmark is not taking part in the adoption of this Regulation and is not bound by it, or subject to its application. Given that this Regulation builds upon the Schengen acquis under the provisions of Title IV of Part Three of the Treaty establishing the European Community, Denmark should, in accordance with Article 5 of the said Protocol, decide within a period of

six months after the Council has adopted this Regulation whether it will implement it in its national law or not.

(25) This Regulation constitutes a development of provisions of the Schengen acquis in which the United Kingdom does not take part, in accordance with Council Decision 2000/365/EC of 29 May 2000 concerning the request of the United Kingdom of Great Britain and Northern Ireland to take part in some of the provisions of the Schengen acquis. The United Kingdom is therefore not taking part in its adoption and is not bound by it or subject to its application.

(26) This Regulation constitutes a development of provisions of the Schengen acquis in which Ireland does not take part, in accordance with Council Decision 2002/192/EC of 28 February 2002 concerning Ireland's request to take part in some of the provisions of the Schengen acquis. Ireland is therefore not taking part in its adoption and is not bound by it or subject to its application.

(27) The Agency should facilitate the organisation of operational actions in which the Member States may avail themselves of the expertise and facilities which Ireland and the United Kingdom may be willing to offer, in accordance with modalities to be decided on a case-by-case basis by the Management Board. To that end, representatives of Ireland and the United Kingdom should be invited to attend all the meetings of the Management Board in order to allow them to participate fully in the deliberations for the preparation of such operational actions.

(28) A controversy exists between the Kingdom of Spain and the United Kingdom on the demarcation of the borders of Gibraltar.

(29) The suspension of the applicability of this Regulation to the borders of Gibraltar does not imply any change in the respective positions of the States concerned,

HAS ADOPTED THIS REGULATION:

## CHAPTER I SUBJECT MATTER

### *Article 1* **Establishment of the Agency<sup>1</sup>**

1. A European Agency for the Management of Operational Cooperation at the External Borders (the Agency) is hereby established with a view to improving the integrated management of the external borders of the Member States of the European Union.

2. While considering that the responsibility for the control and surveillance of external borders lies with the Member States, the Agency **as a body of the Union as defined in Article 15 and in accordance with Article 19 of this Regulation**, shall facilitate and render more effective the application of existing and future [Community] **European Union** measures relating to the management of external borders, **in particular the Schengen Borders Code**. It shall do so by ensuring the coordination of Member States' actions in the implementation of those measures, thereby contributing to an efficient, high and uniform level of control on persons and surveillance of the external borders of the Member States.

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<sup>1</sup> The original Art. 1(4) was repealed by Reg. 863/2007. It is now Art. 1a(1).

**The Agency shall fulfil its tasks in full compliance with the relevant Union law, including the Charter of Fundamental Rights of the European Union, international law, including the Convention Relating to the Status of Refugees of 28 July 1951 ("the Geneva Convention"), obligations related to access to international protection, in particular the principle of non-refoulement, and fundamental rights and taking into account the reports of the Consultative Forum referred to in Article 26a.**

3. The Agency shall also provide the Commission and the Member States with the necessary technical support and expertise in the management of the external borders and promote solidarity between Member States, **especially those facing specific and disproportionate pressures.**

#### *Article 1a* **Definitions<sup>2</sup>**

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

1. 'external borders of the Member States' means the land and sea borders of the Member States and their airports and seaports, to which the provisions of Community law on the crossing of external borders by persons apply;

**1a. "European Border Guard Teams" means for the purpose of Article 3, Article 3b, Article 3c, Article 8 and Article 17 teams to be deployed during joint operations and pilot projects, for the purpose of Articles 8a to 8g teams to be deployed for the rapid border interventions (hereinafter referred to as "rapid interventions)" within the meaning of Regulation (EC) No 863/2007 and for the purpose of Article 2(1)(ea) and (g) and Article 5 teams to be deployed during joint operations, pilot projects and rapid interventions**

2. 'host Member State' means a Member State ~~[on the territory of]~~ **in** which a ~~[deployment of a Rapid Border Intervention Team or a]~~ joint operation ~~[or]~~ a pilot project **or a rapid intervention** takes place **or from which it is launched;**

3. 'home Member State' means the Member State of which a member of the team or the guest officer is a border guard;

4. 'members of the teams' means border guards of Member States serving with the ~~[Rapid Border Intervention Team]~~ **European Border Guard Teams** other than those of the host Member State;

5. 'requesting Member State' means a Member State whose competent authorities request the Agency to deploy the Rapid Border Intervention Teams on its territory;

6. 'guest officers' means the officers of border guard services of Member States other than the host Member State participating in joint operations and pilot projects.

## **CHAPTER II** **TASKS**

### *Article 2* **Main tasks<sup>3</sup>**

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<sup>2</sup> This Art. was inserted by Reg. 863/2007.

<sup>3</sup> Art. 2(1)(g) was inserted by Reg. 863/2007.

1. The Agency shall perform the following tasks:

(a) coordinate operational cooperation between Member States in the field of management of external borders;

(b) assist Member States on training of national border guards, including the establishment of common training standards;

(c) carry out risk analyses, **including the assessment of the capacity of Member States to face threats and pressure at the external borders;**

(d) ~~[follow up on]~~ **participate in** the development of research relevant for the control and surveillance of external borders;

**(da) assist Member States in circumstances requiring increased technical and operational assistance at the external borders, taking into account that some situations may involve humanitarian emergencies and rescue at sea;**

(e) assist Member States in circumstances requiring increased technical and operational assistance at external borders, **especially those Member States facing specific and disproportionate pressures;**

**(ea) set up European Border Guard Teams that are to be deployed during joint operations, pilot projects and rapid interventions;**

(f) provide Member States with the necessary support ~~[in organising]~~ **including, upon request, coordination or organisation of** joint return operations;

(g) deploy ~~[Rapid Border Intervention Teams to Member States in accordance with Regulation (EC) No 863/2007 of the European Parliament and of the Council of 11 July 2007 establishing a mechanism for the creation of Rapid Border Intervention Teams and amending Council Regulation (EC) No 2007/2004 as regards that mechanism and regulating the tasks and powers of guest officers]~~ **border guards from the European Border Guard Teams to Member States in joint operations, pilot projects or in rapid interventions in accordance with Regulation (EC) No 863/2007.**

**(h) develop and operate in accordance with Regulation (EC) No 45/2001 information systems that enable swift and reliable exchanges of information regarding emerging risks at the external borders, including the Information and Coordination Network established by Council Decision 2005/267/EC;**

**(i) provide the necessary assistance to the development and operation of a European border surveillance system and, as appropriate, to the development of a common information sharing environment, including interoperability of systems.**

**1b. In accordance with Union and international law, no person shall be disembarked in, or otherwise handed over to the authorities of, a country in contravention of the principle of non-refoulement, or from which there is a risk of expulsion or return to another country in contravention of that principle. The special needs of children, victims of trafficking, persons in need of medical assistance, persons in need of international protection and other vulnerable persons shall be addressed in accordance with Union and international law.**

2. Without prejudice to the competencies of the Agency, Member States may continue cooperation at an operational level with other Member States and/or third countries at external borders, where such cooperation complements the action of the Agency.

Member States shall refrain from any activity which could jeopardise the functioning of the Agency or the attainment of its objectives.

Member States shall report to the Agency on these operational matters at the external borders outside the framework of the Agency. ***The Executive Director shall inform the Management Board on these matters on a regular basis and at least once a year.***

#### **Article 2a Code of Conduct**

***The Agency shall draw up and further develop a Code of Conduct applicable to all operations coordinated by the Agency. The Code of Conduct shall lay down procedures intended to guarantee the principles of the rule of law and the respect of fundamental rights with particular focus on unaccompanied minors and vulnerable persons, as well as persons seeking international protection, applicable to all persons participating in Frontex activities.***

***The Code of Conduct shall be developed in cooperation with the consultative forum referred to in Article 26a.***

#### **Article 3 Joint operations and pilot projects at the external borders**

1. The Agency shall evaluate, approve and coordinate proposals for joint operations and pilot projects made by Member States, ***including the requests of Member States related to circumstances requiring increased technical and operational assistance, especially in cases of specific and disproportionate pressures.***

The Agency may itself [~~and in agreement~~] ***initiate and carry out joint operations and pilot projects in cooperation*** with the Member State(s) concerned [~~launch initiatives for joint operations and pilot projects in cooperation with~~] ***and in agreement with the host Member States.***

It may also decide to put its technical equipment at the disposal of Member States participating in the joint operations or pilot projects.

***Joint operations and pilot projects should be preceded by a thorough risk analysis.***

***1a. The Agency may also terminate, after informing the Member State concerned, joint operations and pilot projects if the conditions to conduct these initiatives are no longer fulfilled.***

***Participating Member States may request the Agency to terminate a joint operation or pilot project.***

***The home Member State shall provide for appropriate disciplinary or other measures in accordance with their law in case of violations of fundamental rights or international protection obligations in the course of such activities.***



***The Executive Director of the Agency shall suspend or terminate, in whole or in part, joint operations and pilot projects if it considers that violations concerned are of a serious nature or are likely to persist.***

***2. The Agency shall constitute a pool of border guards called European Border Guard Teams in accordance with the provisions of Article 3b, for possible deployment during joint operations and pilot projects referred to in paragraph 1. It shall decide on the deployment of human resources and technical equipment in accordance with Articles 3a and 7.***

[2.] ***3. The Agency may operate through its specialised branches provided for in Article 16, for the practical organisation of joint operations and pilot projects.***

[3.] ***4. The Agency shall evaluate the results of the joint operations and pilot projects and transmit the detailed evaluation reports within 60 days following the end of the activity to the Management Board, together with the observations of the Fundamental Rights Officer referred to in Article 26a. The Agency shall make a comprehensive comparative analysis of those results with a view to enhancing the quality, coherence and efficiency of future operations and projects to be included in its general report provided for in Article 20(2)(b).***

[4.] ***5. The Agency [~~may decide to~~] shall finance or co-finance the operations and projects referred to in paragraph 1, with grants from its budget in accordance with the financial rules applicable to the Agency.***

***5a. Paragraphs 1a and 5 shall apply to rapid interventions.***

#### ***Article 3a Organisational aspects of joint operations and pilot projects***

***1. The Executive Director shall draw up an operational plan for activities referred to in Article 3(1). The Executive Director and the host Member State, in consultation with participating Member States, shall agree on the operational plan detailing the organisational aspects in due time before the envisaged beginning of the activity.***

***The operational plan shall cover all aspects considered necessary for carrying out the joint operation or the pilot project, including the following:***

***(a) a description of the situation, with modus operandi and objectives of the deployment, including the operational aim;***

***(b) the foreseeable duration of the joint operation or pilot projects;***

***(c) the geographical area where the joint operation or pilot project will take place;***

***(d) description of the tasks and special instructions for the guest officers, including on permissible consultation of databases and permissible service weapons, ammunition and equipment in the host Member State;***

***(e) the composition of the teams of guest officers, as well as the deployment of other relevant staff;***

***(f) command and control provisions, including the names and ranks of the host Member State's border guards responsible for cooperating with the guest officers and***

*the Agency, in particular those of the border guards who are in command during the period of deployment, and the place of the guest officers in the chain of command;*

*(g) the technical equipment to be deployed during the joint operation or pilot project, including specific requirements such as conditions for use, requested crew, transport and other logistics, and financial provisions;*

*(h1) detailed provisions on immediate incident reporting by the Agency to the Management Board and to relevant national public authorities;*

*(h2) a reporting and evaluation scheme containing benchmarks for the evaluation report and final date of submission of the final evaluation report in accordance with Article 3(4).*

*(i) regarding sea operations, specific information on the application of the relevant jurisdiction and legislation in the geographical area where the joint operation takes place, including reference to international and Union law regarding interception, rescue at sea and disembarkation;*

*(j) modalities of cooperation with third countries, other European Union agencies and bodies or international organisations.*

*2. Any amendments to or adaptations of the operational plan shall require the agreement of the Executive Director and the host Member State. A copy of the amended or adapted operational plan shall immediately be sent by the Agency to the participating Member States.*

*3. The Agency shall, as part of its coordinating tasks, ensure the operational implementation of all the organisational aspects, including the presence of a staff member of the Agency during joint operations and pilot projects referred to in this Article.*

#### **Article 3b**

##### **Composition and deployment of European Border Guard Teams**

*1. On a proposal by the Executive Director, the Management Board shall decide by an absolute majority of its members with a right to vote on the profiles and the overall number of border guards to be made available for the European Border Guard Teams. The same procedure shall apply with regard to any subsequent changes in the profiles and the overall numbers. Member States shall contribute to the European Border Guard Teams via a national pool on the basis of the various defined profiles by nominating border guards corresponding to the required profiles.*

*2. The contribution by Member States as regards their border guards to specific operations for the coming year shall be planned on the basis of annual bilateral negotiations and agreements between the Agency and Member States. In accordance with these agreements, Member States shall make the border guards available for deployment at the request of the Agency, unless they are faced with an exceptional situation substantially affecting the discharge of national tasks. Such a request shall be made at least 45 days before the intended deployment. The autonomy of the home Member State in relation to the selection of staff and the duration of their deployment shall remain unaffected.*

*3. The Agency shall also contribute to the European Border Guard Teams with competent border guards seconded by the Member States as national experts*

***pursuant to Article 17(5). The contribution by Member States as regards seconding their border guards to the Agency for the coming year shall be planned on the basis of annual bilateral negotiations and agreements between the Agency and Member States.***

***In accordance with these agreements, Member States shall make the border guards available for secondment, unless this would seriously affect the discharge of national tasks. In such situations Member States may recall their seconded border guards.***

***The maximum duration of such secondments shall not exceed six months in a twelve month period. They shall, for the purpose of this Regulation, be considered as guest officers and have the tasks and powers referred to in Article 10. The Member State having seconded the border guards in question shall be considered as "home Member State" as defined in Article 1a(3) for the purpose of applying Articles 3c, 10, and 10b. Other staff employed by the Agency on a temporary basis who are not qualified to perform border control functions shall only be deployed during joint operations and pilot projects for coordination tasks.***

***4. Members of the European Border Guard Teams shall, in the performance of their tasks and in the exercise of their powers, fully respect fundamental rights, including access to asylum procedures, and human dignity. Any measures taken in the performance of their tasks and in the exercise of their powers shall be proportionate to the objectives pursued by such measures. While performing their tasks and exercising their powers, they shall not discriminate against persons on grounds of sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation.***

***5. In accordance with Article 8g the Agency will nominate a coordinating officer for each joint operation or pilot project where members of the European Border Guard Teams will be deployed.***

***The role of the coordinating officer shall be to foster cooperation and coordination amongst host and participating Member States.***

***6. The Agency shall meet the costs incurred by the Member States in making their border guards available pursuant to paragraph 1 for the European Border Guard Teams in accordance with Article 8h.***

***6a. The Agency shall inform the EP on an annual basis on the number of border guards that each Member State has committed to the European Border Guard Teams in accordance with this Article.***

#### **Article 3c**

##### **Instructions to the European Border Guard Teams**

***1. During deployment of European Border Guard Teams instructions to the teams shall be issued by the host Member State in accordance with the operational plan referred to in Article 3a (1).***

***2. The Agency, via its coordinating officer as referred to in Article 3b (5), may communicate its views on those instructions to the host Member State. If it does so, the host Member State shall take those views into consideration.***

***3. In accordance with Article 8g the host Member State shall give the coordinating officer all necessary assistance, including full access to the European Border Guard Teams at all times throughout the deployment.***

**4. Members of the European Border Guard Teams shall, while performing their tasks and exercising their powers, remain subject to the disciplinary measures of their home Member State.**

#### *Article 4* **Risk analysis**

The Agency shall develop and apply a common integrated risk analysis model.

It shall prepare both general and tailored risk analyses to be submitted to the Council and the Commission.

***For the purpose of risk analysis, the Agency may assess, after prior consultation with the Member State(s) concerned, their capacity to face upcoming challenges, including present and future threats and pressures at the external borders of the European Union, especially for those Member States facing specific and disproportionate pressures. To this end the Agency may assess the equipment and the resources of the Member States regarding border control. The assessment shall be based on information given by the Member State(s) concerned, and on the reports and results of joint operations, pilot projects, rapid interventions and other activities of the Agency. These assessments are without prejudice to the Schengen Evaluation Mechanism.***

***The results of these assessments shall be presented to the Management Board of the Agency. For these purposes Member States shall provide the Agency with all necessary information regarding the situation and possible threats at the external borders.***

The Agency shall incorporate the results of a common integrated risk analysis model in its development of the common core curriculum for border guards' training referred to in Article 5.

#### *Article 5* **Training**

***The Agency shall provide border guards who are part of the European Border Guard Teams with advanced training relevant to their tasks and powers and shall conduct regular exercises with those border guards in accordance with the advanced training and exercise schedule referred to in the Agency's annual work programme.***

***The Agency shall also take the necessary initiatives to ensure that all border guards and other personnel of the Member States who participate in the European Border Guard Teams, as well as the staff of the Agency, shall, prior to their participation in operational activities organised by the Agency, have received training in relevant Union and international law, including fundamental rights and access to international protection and guidelines for the purpose of identifying persons seeking protection and directing them towards the appropriate facilities.***

The Agency shall establish and further develop a common core curriculum for border guards' training and provide training at European level for instructors of the national border guards of Member States, ***including with regard to fundamental rights and access to international protection and relevant maritime law.***

***Training curricula shall be drawn up after consultation of the Consultative Forum referred to in Article 26a.***

**Member States shall integrate the common core curricula in the training of their national border guards.**

The Agency shall also offer additional training courses and seminars on subjects related to the control and surveillance of the external borders and return of third country nationals for officers of the competent national services of Member States.

The Agency may organise training activities in cooperation with Member States on their territory.

**The Agency shall establish an exchange programme enabling national border guards participating in the European Border Guard Teams to acquire knowledge or specific know-how from experiences and good practices abroad by working with border guards in a Member State other than their own.**

#### Article 6

#### **[Follow-up] Monitor and contribute to research**

The Agency shall ~~[follow-up on]~~ **proactively monitor and contribute to** the developments in research relevant for the control and surveillance of external borders and disseminate this information to the Commission and the Member States.

#### Article 7

#### **[Management of] technical equipment**

**1. The Agency may acquire, itself or in co-ownership with a Member State, or lease technical equipment for external border control to be deployed during joint operations, pilot projects, rapid interventions, return operations or technical assistance projects in accordance with the financial rules applicable to the Agency. Any acquisition or leasing of equipment entailing significant costs to the Agency shall be preceded by a thorough needs and cost/benefit analysis. Any such expenditure shall be provided for in the Agency's budget as adopted by the Management Board in accordance with Article 29(9). In case the Agency acquires or leases important technical equipment, such as open sea and coastal patrol vessels or vehicles, to be used in joint operations, the following provisions shall apply:**

**– in case of acquisition and co-ownership, the Agency agrees formally with one Member State that the latter will provide for the registration of the equipment in accordance with the applicable legislation of that Member State;**

**– in case of leasing, the equipment must be registered in a Member State.**

**Based on a model agreement drawn up by the Agency, the Member State of registration and the Agency shall agree on modalities ensuring the periods of full availability of the co-owned assets for the Agency, as well as on the terms of use of the equipment.**

**The Member State of registration or the supplier of technical equipment shall provide the necessary experts and technical crew to operate the technical equipment in a legally sound and safe manner.**

**2. The Agency shall set up and keep centralised records of ~~[technical equipment for control and surveillance of external borders belonging to Member States, which they, on a voluntary basis and upon request from another Member State, are willing to put at the disposal of that Member State for a temporary period following a needs and risks analysis carried out by the Agency]~~ equipment in a technical equipment pool composed of equipment owned either by the Member States or by the Agency and equipment co-owned by the Member States and the Agency for external border control purposes. The technical**

**equipment pool shall contain a minimum number per type of technical equipment defined in accordance with paragraph 5 of this article. The equipment listed in the technical equipment pool shall be deployed during the activities referred to in Articles 3, 8a and 9.**

**3. Member States shall contribute to the technical equipment pool referred to in paragraph 2. The contribution by Member States to the pool and deployment of the technical equipment for specific operations shall be planned on the basis of annual bilateral negotiations and agreements between the Agency and Member States. In accordance with these agreements and to the extent that it forms part of the minimum number of equipment for a given year, Member States shall make their technical equipment available for deployment at the request of the Agency, unless they are faced with an exceptional situation substantially affecting the discharge of national tasks. Such requests shall be made at least 45 days before the intended deployment. The contributions to the technical equipment pool shall be reviewed annually.**

**4. The Agency shall manage the records of the technical equipment pool as follows:**

**(a) classification by type of equipment and by type of operation;**

**(b) classification by owner (Member State, Agency, others);**

**(c) overall numbers of required equipment;**

**(d) crew requirements if applicable;**

**(e) other information such as registration details, transportation and maintenance requirements, national applicable export regimes, technical instructions, or other relevant information to handle the equipment correctly.**

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

**The rules including the required overall minimum numbers per type of equipment, the conditions for deployment and reimbursement of costs shall be decided in accordance with Article 24 on a yearly basis by the Management Board on a proposal by the Executive Director. For budgetary purposes this decision should be taken by the Management Board by 31 March.**

**The minimum number of equipment shall be proposed by the Agency in accordance with its needs, notably be able to carry out joint operations, pilot projects, rapid interventions and return operations, in accordance with the work programme of the Agency for the year in question.**

**If the minimum number of equipment proves to be insufficient to carry out the operational plan agreed for joint operations, pilot projects, rapid interventions or return operations, it shall be revised by the Agency on the basis of justified needs and of an agreement between the Agency and the Member States.**

**6. The Agency shall report on the composition and the deployment of equipment which is part of the technical equipment pool to the Management Board on a monthly**

**basis. In case the minimum number of equipment referred to in paragraph 5 is not reached, the Executive Director shall inform the Management Board without delay. The Management Board shall take a decision on the prioritisation of the deployment of the technical equipment urgently and take the appropriate steps to remedy the identified shortcomings. It shall inform the Commission of the identified shortcomings and the steps taken. The Commission shall subsequently inform the European Parliament and the Council, together with its own assessment.**

**6a. The Agency shall inform the EP on an annual basis on the number of technical equipment that each Member State has committed to the pool in accordance with this Article.**

#### *Article 8*

### **Support to Member States in circumstances requiring increased technical and operational assistance at external borders<sup>4</sup>**

1. Without prejudice to Article [64(2)] **78(3)** of the Treaty *on the Functioning of the European Union*, one or more Member States **facing specific and disproportionate pressures and** confronted with circumstances requiring increased technical and operational assistance when implementing their obligations with regard to control and surveillance of external borders may request the Agency for assistance. The Agency ~~[can]~~ **shall in accordance with Article 3** organise the appropriate technical and operational assistance for the requesting Member State(s).

2. Under the circumstances referred to in paragraph 1, the Agency can:

(a) assist on matters of coordination between two or more Member States with a view to tackling the problems encountered at external borders;

(b) deploy its experts to support the competent national authorities of the Member State(s) involved for the appropriate duration.

**(ba) deploy border guards from the European Border Guard Teams.**

3. The Agency may acquire technical equipment for checks and surveillance of external borders to be used by its experts and within the framework of the ~~[Rapid Border Intervention Teams for the duration of their deployment]~~ **rapid interventions for their duration.**

#### *Article 8a*

### **Rapid ~~[Border Intervention Teams]~~ Interventions<sup>5</sup>**

At the request of a Member State faced with a situation of urgent and exceptional pressure, especially the arrival at points of the external borders of large numbers of third-country nationals trying to enter the territory of that Member State illegally, the Agency may deploy for a limited period one or more ~~[Rapid Border Intervention]~~ **European Border Guard Teams** (hereinafter referred to as 'team(s)') on the territory of the requesting Member State for the appropriate duration, in accordance with Article 4 of Regulation (EC) No 863/2007.

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<sup>4</sup> Art. 8(3) was replaced by Reg. 863/2007.

<sup>5</sup> Arts. 8a to 8h were added by Reg. 863/2007.

*Article 8b*  
**Composition of teams**

1. In the event of a situation as described in Article 8a, Member States shall, at the request of the Agency, immediately communicate the number, names and profiles of border guards from their national pool which they are able to make available within five days to be members of a team. Member States shall make the border guards available for deployment at the request of the Agency unless they are faced with an exceptional situation substantially affecting the discharge of national tasks.

2. When determining the composition of a team for deployment, the Executive Director shall take into account the particular circumstances which the requesting Member State is facing. The team shall be composed in accordance with the operational plan referred to in Article 8e.

*Article 8c*  
**Training and exercises**

The Agency shall provide border guards who are part of the Rapid Pool, as referred to in Article 4(2) of Regulation (EC) No 863/2007 with advanced training relevant to their tasks and powers and shall conduct regular exercises with those border guards in accordance with the advanced training and exercise schedule referred to in the Agency's annual working programme.

*Article 8d*  
**Procedure for deciding on deployment of the teams**

1. A request for deployment of the teams in accordance with Article 8a shall include a description of the situation, possible aims and envisaged needs for the deployment. If required, the Executive Director may send experts from the Agency to assess the situation at the external borders of the requesting Member State.

2. The Executive Director shall immediately inform the Management Board of a Member State's request for deployment of the teams.

3. When deciding on the request of a Member State, the Executive Director shall take into account the findings of the Agency's risk analyses as well as any other relevant information provided by the requesting Member State or another Member State.

4. The Executive Director shall take a decision on the request for deployment of the teams as soon as possible and no later than five working days from the date of the receipt of the request. The Executive Director shall simultaneously notify the requesting Member State and the Management Board in writing of the decision. The decision shall state the main reasons on which it is based.

5. If the Executive Director decides to deploy one or more teams, an operational plan shall immediately, **and in any event no later than 5 working days of the date of the decision**, be drawn up by the Agency and the requesting Member State in accordance with Article 8e.

6. As soon as the operational plan has been agreed, the Executive Director shall inform the Member States of the requested number and profiles of border guards which are to be deployed in the teams. This information shall be provided, in writing, to the national contact points designated under Article 8f and shall indicate the date on which the deployment is to take place. A copy of the operational plan shall also be provided to them.



7. If the Executive Director is absent or indisposed, the decisions related to the deployment of the teams shall be taken by the Deputy Executive Director.

8. Member States shall make the border guards available for deployment at the request of the Agency, unless they are faced with an exceptional situation substantially affecting the discharge of national tasks.

9. Deployment of the teams shall take place no later than five working days after the date on which the operational plan is agreed between the Executive Director and the requesting Member State.

*Article 8e*  
**Operational plan**

1. The Executive Director and the requesting Member State shall agree on an operational plan detailing the precise conditions for deployment of the teams. The operational plan shall include the following:

(a) description of the situation, with *modus operandi* and objectives of the deployment, including the operational aim;

(b) the foreseeable duration of deployment of the teams;

(c) the geographical area of responsibility in the requesting Member State where the teams will be deployed;

(d) description of tasks and special instructions for members of the teams, including on permissible consultation of databases and permissible service weapons, ammunition and equipment in the host Member State;

(e) the composition of the teams;

(f) **command and control provisions, including** the names and ranks of the host Member State's border guards responsible for cooperating with the teams, in particular those of the border guards who are in command of the teams during the period of deployment, and the place of the teams in the chain of command;

(g) the technical equipment to be deployed together with the teams [~~in accordance with Article 8~~], **including specific requirements such as conditions for use, requested crew, transport and other logistics, and financial provisions.**

**(h1) detailed provisions on immediate incident reporting by the Agency to the Management Board and to relevant national public authorities;**

**(h2) a reporting and evaluation scheme containing benchmarks for the evaluation report and final date of submission of the final evaluation report in accordance with Article 3(4).**

**(i) regarding sea operations, information on the application of the relevant jurisdiction and legislation in the geographical area where the joint operation takes place including references to international and Union law regarding interception, rescue at sea and disembarkation;**

**(j) modalities of cooperation with third countries, other European Union agencies and bodies or international organisations.**

2. Any amendments to or adaptations of the operational plan shall require the agreement of both the Executive Director and the requesting Member State. A copy of the amended or adapted operational plan shall immediately be sent by the Agency to the participating Member States.

*Article 8f*  
**National contact point**

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

*Article 8g*  
**Coordinating Officer**

1. The Executive Director shall appoint one or more experts from the staff of the Agency to be deployed as coordinating officer. The Executive Director shall notify the host Member State of the appointment.

2. The coordinating officer shall act on behalf of the Agency in all aspects of the deployment of the teams. In particular, the coordinating officer shall:

(a) act as an interface between the Agency and the host Member State;

(b) act as an interface between the Agency and the members of the teams, providing assistance, on behalf of the Agency, on all issues relating to the conditions for their deployment with the teams;

(c) monitor the correct implementation of the operational plan;

(d) report to the Agency on all aspects of the deployment of the teams.

3. In accordance with Article 25(3)f, the Executive Director may authorise the coordinating officer to assist in resolving any disagreement on the execution of the operational plan and deployment of the teams.

4. In discharging his duties, the coordinating officer shall take instructions only from the Agency.

*Article 8h*  
**Costs**

1. The Agency shall fully meet the following costs incurred by Member States in making available their border guards for the purposes mentioned in Articles **3(2)**, 8a and 8c:

(a) travel costs from the home Member State to the host Member State and from the host Member State to the home Member State;

(b) costs related to vaccinations;

(c) costs related to special insurance needs;

(d) costs related to health care;

(e) daily subsistence allowances, including accommodation costs;

(f) costs related to the Agency's technical equipment.

2. Detailed rules concerning the payment of the daily subsistence allowance of members of the teams shall be established by the Management Board.

#### *Article 9* **Return cooperation**

1. Subject to the [Community] return policy **of the Union, and in particular Directive 2008/115/EC and without entering into the merits of return decisions**, the Agency shall provide the necessary assistance [for organising] **and upon request of the participating Member States ensure the coordination or the organisation of joint return operations of Member States, including through the chartering of aircraft for the purpose of such operations. The Agency shall finance or co-finance the operations and projects referred to in this paragraph, with grants from its budget in accordance with the financial rules applicable to the Agency.** The Agency may also use [Community] financial means **of the European Union** available in the field of return. **The Agency shall ensure that in its grant agreements with Member States any financial support is conditional upon the full respect of the Charter of Fundamental Rights.**

**2. The Agency shall develop a Code of Conduct for the return of illegally present third-country nationals which shall apply during all joint return operations coordinated by the Agency, describing common standardized procedures which should simplify the organisation of joint return operations and assure return in a humane manner and in full respect for fundamental rights, in particular the principles of human dignity, prohibition of torture and of inhuman or degrading treatment or punishment, right to liberty and security, the rights to the protection of personal data and non discrimination.**

**3. The Code of Conduct will in particular pay attention to the obligation set out in Article 8(6) of Directive 2008/115/EC to provide for an effective forced-return monitoring system and to the Fundamental Rights strategy referred to in Article 26a(1). The monitoring of joint return operations should be carried out on the basis of objective and transparent criteria and should cover the whole joint return operation from the pre-departure phase until the handover of the returnees in the country of return.**

**4. Member States shall regularly inform the Agency of their needs for the assistance or coordination by the Agency. The Agency shall draw up a rolling operational plan to provide the requesting Member States with the necessary operational support, including technical equipment referred to in Article 7(1). The Management Board shall decide in accordance with Article 24 on a proposal of the Executive Director, on the content and modus operandi of the rolling operational plan.**

[2.] **5. The Agency shall cooperate with competent authorities of the relevant third countries referred to in Article 14, identify best practices on the acquisition of travel documents and the removal of illegally present third-country nationals.**

*Article 10*

**Tasks and powers of guest officers<sup>6</sup>**

1. Guest officers shall have the capacity to perform all tasks and exercise all powers for border checks or border surveillance in accordance with Regulation (EC) No 562/2006 of the European Parliament and of the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code), and that are necessary for the realisation of the objectives of that Regulation.
2. While performing their tasks and exercising their powers guest officers shall comply with [~~Community~~] **Union and international law, in accordance with fundamental rights**, and the national law of the host Member State.
3. Guest officers may only perform tasks and exercise powers under instructions from and, as a general rule, in the presence of border guards of the host Member State.
4. Guest officers shall wear their own uniform while performing their tasks and exercising their powers. They shall wear a blue armband with the insignia of the European Union and the Agency on their uniforms, identifying them as participating in a joint operation or pilot project. For the purposes of identification vis-à-vis the national authorities of the host Member State and its citizens, guest officers shall at all times carry an accreditation document, as provided for in Article 10a, which they shall present on request.
5. By way of derogation from paragraph 2, while performing their tasks and exercising their powers, guest officers may carry service weapons, ammunition and equipment as authorised according to the home Member State's national law. However, the host Member State may prohibit the carrying of certain service weapons, ammunition and equipment, provided that its own legislation applies the same prohibition to its own border guards. The host Member State shall, in advance of the deployment of the guest officers, inform the Agency of the permissible service weapons, ammunition and equipment and of the conditions for their use. The Agency shall make this information available to Member States.
6. By way of derogation from paragraph 2, while performing their tasks and exercising their powers, guest officers shall be authorised to use force, including service weapons, ammunition and equipment, with the consent of the home Member State and the host Member State, in the presence of border guards of the host Member State and in accordance with the national law of the host Member State.
7. By way of derogation from paragraph 6, service weapons, ammunition and equipment may be used in legitimate self-defence and in legitimate defence of guest officers or of other persons, in accordance with the national law of the host Member State.
8. For the purpose of this Regulation, the host Member State may authorise guest officers to consult its national and European databases which are necessary for border checks and surveillance. The guest officers shall consult only those data which are required for performing their tasks and exercising their powers. The host Member State shall, in advance of the deployment of the guest officers, inform the Agency of the national and European databases which may be consulted. The Agency shall make this information available to all Member States participating in the deployment.
9. The consultation as referred to in paragraph 8 shall be carried out in accordance with Community law and the national law of the host Member State in the area of data protection.

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<sup>6</sup> Art. 10 was replaced by Reg. 863/2007.

10. Decisions to refuse entry in accordance with Article 13 of Regulation (EC) No 562/2006 shall be taken only by border guards of the host Member State.

*Article 10a*  
**Accreditation document<sup>7</sup>**

1. The Agency shall, in cooperation with the host Member State, issue a document in the official language of the host Member State and another official language of the institutions of the European Union to guest officers for the purpose of identifying them and as proof of the holder's rights to perform the tasks and exercise the powers as referred to in Article 10(1). The document shall include the following features of the guest officer:

- (a) name and nationality;
- (b) rank; and
- (c) a recent digitised photograph.

2. The document shall be returned to the Agency at the end of the joint operation or pilot project.

*Article 10b*  
**Civil liability**

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

2. Where such damage is caused by gross negligence or wilful misconduct, the host Member State may approach the home Member State in order to have any sums it has paid to the victims or persons entitled on their behalf reimbursed by the home Member State.

3. Without prejudice to the exercise of its rights vis-à-vis third parties, each Member State shall waive all its claims against the host Member State or any other Member State for any damage it has sustained, except in cases of gross negligence or wilful misconduct.

4. Any dispute between Member States relating to the application of paragraphs 2 and 3 which cannot be resolved by negotiations between them shall be submitted by them to the Court of Justice of the European Communities in accordance with Article 239 of the Treaty.

5. Without prejudice to the exercise of its rights vis-à-vis third parties, the Agency shall meet costs related to damage caused to the Agency's equipment during deployment, except in cases of gross negligence or wilful misconduct.

*Article 10c*  
**Criminal liability**

During the deployment of a joint operation or a pilot project, guest officers shall be treated in the same way as officials of the host Member State with regard to any criminal offences that might be committed against them or by them.

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<sup>7</sup> Arts. 10a to 10c were inserted by Reg. 863/2007.

*Article 11*  
**Information exchange systems**

The Agency may take all necessary measures to facilitate the exchange of information relevant for its tasks with the Commission and the Member States, **and, where appropriate, the European Agencies referred to in Article 13. It shall develop and operate an information system capable of exchanging classified information with these actors, including personal data referred to in Articles 11a, 11b and 11c.**

**The Agency may take all necessary measures to facilitate the exchange of information relevant for its tasks with United Kingdom and Ireland if it relates to the activities in which they participate in accordance with Articles 12 and 20(5).**

**Article 11a**  
**Data protection**

**Regulation (EC) No 45/2001 shall apply to the processing of personal data by the Agency.**

**The Management Board shall establish measures for the application of Regulation (EC) No 45/2001 by the Agency, including those concerning the Data Protection Officer of the Agency. These measures shall be established after the consultation of the European Data Protection Supervisor. Without prejudice to Articles 11b and 11c, the Agency may process personal data for administrative purposes.**

**Article 11b**  
**Processing of personal data in the context of joint return operations**

**In accordance with the measures referred to in the second paragraph of Article 11a:**

- 1. In performing its task of the organization and coordination of joint return operations of Member States referred to in Article 9, the Agency may process personal data of persons who are subject to such joint return operations.**
- 2. The processing of such personal data shall respect the principles of necessity and proportionality. In particular, it shall be strictly limited to those personal data which are required for the purposes of the joint return operation.**
- 3. The personal data shall be deleted as soon as the purpose for which they have been collected has been achieved and no later than 10 days after the joint return operation.**
- 4. In case the personal data are not transferred to the carrier by a Member State, the Agency may transfer such data.**

**Article 11c**  
**Processing of personal data collected during joint operations,  
pilot projects and rapid interventions**

**In accordance with the measures referred to in Article 11a:**

- 1. Without prejudice to the competence of Member States to collect personal data in the context of joint operations, pilot projects and rapid interventions and subject to the limitations set out in paragraphs 2 and 3, the Agency may further process personal data collected by the Member States during such operational activities and**

**transmitted to the Agency in order to contribute to the security of the external borders of the Member States of the European Union.**

**2. Such further processing of personal data by the Agency shall be limited to personal data regarding persons who are suspected, by the relevant authorities of Member States, on reasonable grounds of involvement in cross-border criminal activities, in facilitation of illegal migration activities or in human trafficking activities as defined in Article 1(1)(a) and (b) of Council Directive 2002/90/EC.**

**3. Personal data referred to in paragraph 2 shall be further processed by the Agency only for the following purposes:**

**(a) Transmission, on a case by case basis, to Europol or other EU law enforcement agencies, subject to Article 13 of this Regulation.**

**(b) Use for the preparation of risk analyses referred to in Article 4. In the result of the risk-analyses data shall be depersonalized.**

**4. The personal data shall be deleted as soon as they have been transmitted to Europol or other European Agencies or used for the preparation of risk analyses referred to in Article 4. The term of storage shall in any event not exceed three months after the date of the collection of those data.**

**5. The processing of such personal data shall respect the principles of necessity and proportionality. The personal data shall not be used by Frontex for the purpose of investigations, which remain under the responsibility of the competent national authorities.**

**In particular, it shall be strictly limited to those personal data which are required for the purposes referred to in paragraph 3.**

**6. Without prejudice to Regulation (EC) No 1049/2001, onward transmission or other communication of such personal data processed by the Agency to third countries or other third parties is prohibited.**

#### **Article 11d**

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

**1. The Agency shall apply the Commission's rules on security as set out in the Annex to Commission Decision 2001/844/EC, ECSC, Euratom. This shall cover, inter alia, provisions for the exchange, processing and storage of classified information.**

**2. The Agency shall apply the security principles relating to the processing of non-classified sensitive information as adopted and implemented by the European Commission. The Management Board shall establish measures for the application of these security principles.**

#### **Article 12**

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

**1. The Agency shall facilitate operational cooperation of the Member States with Ireland and the United Kingdom in matters covered by its activities and to the extent required for the fulfilment of its tasks set out in Article 2(1).**

2. Support to be provided by the Agency pursuant to Article 2(1)(f) shall cover the organisation of joint return operations of Member States in which Ireland or the United Kingdom, or both, also participate.

3. The application of this Regulation to the borders of Gibraltar shall be suspended until the date on which an agreement is reached on the scope of the measures concerning the crossing by persons of the external borders of the Member States.

#### Article 13

### **Cooperation with ~~[Europe]~~ European Union agencies and bodies and international organisations**

The Agency may cooperate with Europol, ***the European Asylum Support Office, the Fundamental Rights Agency, other European Union agencies and bodies***, and the international organisations competent in matters covered by this Regulation in the framework of working arrangements concluded with those bodies, in accordance with the relevant provisions of the Treaty and the provisions on the competence of those bodies. ***In every case the Agency shall inform the European Parliament of any such arrangements.***

***Onward transmission or other communication of personal data processed by the Agency to other European Union agencies or bodies shall be subject to specific working arrangements regarding the exchange of personal data and subject to the prior approval of the European Data Protection Supervisor.***

***The Agency may also, with the agreement of the Member State(s) concerned, invite observers of European Union agencies and bodies or international organisations to participate in its activities referred to in Articles 3, 4 and 5, to the extent that their presence is in accordance with the objectives of these activities, may contribute to the improvement of cooperation and the exchange of best practices, and does not affect the overall safety of the 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 4 and 5 and only with the agreement of the host Member State regarding those referred to in Article 3. Detailed rules on the participation of observers shall be included in the operational plan referred to in Article 3a(1). These observers shall receive the appropriate training from the Agency prior to their participation.***

#### Article 14

### **Facilitation of operational cooperation with third countries and cooperation with competent authorities of third countries**

1. In matters covered by its activities and to the extent required for the fulfilment of its tasks, the Agency shall facilitate the operational cooperation between Member States and third countries, in the framework of the European Union external relations policy, ***including with regard to human rights.***

***The Agency and the Member States shall comply with the norms and standards at least equivalent to those set by the EU legislation also when cooperation with third countries takes place on the territory of those countries.***

***The establishment of cooperation with third countries shall serve to promote European border management standards, also covering respect for fundamental rights and human dignity.***



**2. The Agency may cooperate with the authorities of third countries competent in matters covered by this Regulation in the framework of working arrangements concluded with these authorities, in accordance with the relevant provisions of the Treaty. *Those working arrangements shall be purely related to the management of operational cooperation.***

**3. *The Agency may deploy its liaison officers, which should enjoy the highest possible protection to carry out their duties, in third countries. They shall form part of the local or regional cooperation networks of Member States' immigration liaison officers set up pursuant to Council Regulation No 377/2004. Liaison officers shall only be deployed to third countries in which border management practices respect minimum human rights standards. Their deployment shall be approved by the Management Board. Within the framework of the European Union external relations policy, priority for deployment should be given to those third countries, which on the basis of risk analysis constitute a country of origin or transit regarding illegal migration. On a reciprocal basis the Agency may receive liaison officers posted by those third countries also, for a limited period of time. The Management Board shall adopt, on a proposal of the Executive Director, the list of priorities on a yearly basis in accordance with the provisions of Article 24.***

**4. *The tasks of the Agency's liaison officers shall include, in compliance with European Union law and in accordance with fundamental rights, the establishment and maintaining of contacts with the competent authorities of the third country to which they are assigned to with a view to contribute to the prevention of and fight against illegal immigration and the return of illegal migrants.***

**5. *The Agency may benefit from Union funding in accordance with the provisions of the relevant instruments supporting the Union's external relations policy. It may launch and finance technical assistance projects in third countries regarding matters covered by this Regulation.***

**6. *The Agency may also with the agreement of the Member State(s) concerned invite observers of third countries to participate in its activities referred to in Articles 3, 4 and 5, to the extent that their presence is in accordance with the objectives of these activities, may contribute to the improvement of cooperation and the exchange of best practices, and does not affect the overall safety of the 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 4 and 5 and only with the agreement of the host Member State regarding those referred to in Article 3. Detailed rules on the participation of observers shall be included in the operational plan referred to in Article 3a(1). These observers shall receive the appropriate training from the Agency prior to their participation.***

**7. *When concluding bilateral agreements with third countries as referred to in Article 2(2) Member States may include provisions concerning the role and competencies of the Agency, in particular regarding the exercise of executive powers by members of the teams deployed by the Agency during the activities referred to in Article 3.***

**8. *The activities referred to in paragraphs 2 and 3 shall be subject to receiving a prior opinion of the Commission, and the European Parliament shall be fully informed as soon as possible.***

## CHAPTER III STRUCTURE

### *Article 15* **Legal status and location**

The Agency shall be a body of the [Community] **Union**.

It shall have legal personality.

In each of the Member States, the Agency shall enjoy the most extensive legal capacity accorded to legal persons under their laws. It may, in particular, acquire or dispose of movable and immovable property and may be party to legal proceedings.

The Agency shall be independent in relation to technical matters.

It shall be represented by its Executive Director.

The seat of the Agency shall be decided by unanimity of the Council.

### *Article 15a* **Headquarters Agreement**

***The necessary arrangements concerning the accommodation to be provided for the Agency in the Member State in which the Agency has its seat and the facilities to be made available by that State, as well as the specific rules applicable to the Executive Director, the Deputy Executive Director, the members of the Management Board, the staff of the Agency and members of their families, in that State shall be laid down in a Headquarters Agreement between the Agency and the Member State in which the Agency has its seat. The Headquarters Agreement shall be concluded after obtaining the approval of the Management Board. The Member State in which the Agency has its seat should provide the best possible conditions to ensure proper functioning of the Agency, including multilingual, European-oriented schooling and appropriate transport connections.***

### *Article 16* **Specialised branches**

The Management Board of the Agency shall evaluate the need for, and decide upon the setting up of, specialised branches in the Member States, subject to their consent, taking into account that due priority should be given to the operational and training centres already established and specialised in the different aspects of control and surveillance of the land, air and maritime borders respectively.

The specialised branches of the Agency shall develop best practices with regard to the particular types of external borders for which they are responsible. The Agency shall ensure the coherence and uniformity of such best practices.

Each specialised branch shall submit a detailed annual report to the Executive Director of the Agency on its activities and shall provide any other type of information relevant for the coordination of operational cooperation.

### *Article 17* **Staff**

1. The Staff Regulations of officials of the European Communities, the Conditions of employment of other servants of the European Communities and the rules adopted jointly by the institutions of the European Communities for the purposes of applying those Regulations and Conditions shall apply to the Agency's staff.

2. The powers conferred on the appointing authority by the Staff Regulations, and by the Conditions of employment of other servants, shall be exercised by the Agency in respect of its own staff.

3. ~~[The Agency's staff shall consist of a sufficient number of officials and of national experts in the field of control and surveillance of the external borders seconded by the Member States to carry out management duties. The remaining staff shall consist of other employees recruited by the Agency as necessary to carry out its tasks.]~~ ***For the purpose of implementing Article 3b(5) only an Agency's staff member subject to the Staff Regulations of Officials and to Title II of the Conditions of employment of other servants of the European Communities employed by the Agency can be designated as coordinating officer in accordance with Article 8g. For the purpose of implementing Article 3b(3) only national experts seconded by a Member State to the Agency can be designated to be attached to the European Border Guard Teams. The Agency shall designate those national experts that shall be attached to the European Border Guard Teams in accordance with that Article.***

***4. The Management Board shall adopt the necessary implementing measures in agreement with the Commission pursuant to the arrangements provided for in Article 110 of the Staff Regulations of Officials of the Union.***

***5. The Management Board may adopt provisions to allow national experts from Member States to be seconded to the Agency. Those provisions shall take into account the requirements of Article 3b(2), in particular the fact that they are considered as guest officers and have the tasks and powers referred to in Article 10. They shall include provisions on the conditions of deployment.***

#### *Article 18* **Privileges and immunities**

The Protocol on the privileges and immunities of the European Communities shall apply to the Agency.

#### *Article 19* **Liability**

1. The contractual liability of the Agency shall be governed by the law applicable to the contract in question.

2. The Court of Justice of the European Communities shall have jurisdiction to give judgment pursuant to any arbitration clause contained in a contract concluded by the Agency.

3. In the case of non-contractual liability, the Agency shall, in accordance with the general principles common to the laws of the Member States, make good any damage caused by its departments or by its servants in the performance of their duties.

4. The Court of Justice shall have jurisdiction in disputes relating to compensation for the damage referred to in paragraph 3.

5. The personal liability of its servants towards the Agency shall be governed by the provisions laid down in the Staff Regulations or Conditions of employment applicable to them.

#### *Article 20*

### **Powers of the Management Board**

1. The Agency shall have a Management Board.

2. The Management Board shall:

(a) appoint the Executive Director on a proposal from the Commission in accordance with Article 26;

(b) before 31 March each year, adopt the general report of the Agency for the previous year and forward it by 15 June at the latest to the European Parliament, the Council, the Commission, the European Economic and Social Committee and the Court of Auditors. The general report shall be made public;

(c) before 30 September each year, and after receiving the opinion of the Commission, adopt, by a three-quarters majority of its members with a right to vote, the Agency's programme of work for the coming year and forward it to the European Parliament, the Council and the Commission; this programme of work shall be adopted according to the annual Community budgetary procedure and the Community legislative programme in relevant areas of the management of external borders;

(d) establish procedures for taking decisions related to the operational tasks of the Agency by the Executive Director;

(e) carry out its functions relating to the Agency's budget pursuant to Articles 28, 29(5), (9) and (11), Article 30(5) and Article 32;

(f) exercise disciplinary authority over the Executive Director and over the Deputy Director, in agreement with the Executive Director;

(g) establish its Rules of Procedure;

(h) establish the organisational structure of the Agency and adopt the Agency's staffing policy ***in particular the multi-annual staff policy plan. In accordance with the relevant provisions of the framework Financial Regulation for the bodies referred to in Article 185 of Council Regulation (EC, Euratom) No 1605/2002 the multi-annual staff policy plan shall be submitted to the Commission and the budgetary authority after receiving a favourable opinion of the Commission;***

***(i) adopt the Agency's Multi Annual Plan aiming at outlining the future long term strategy regarding the activities of the Agency.***

3. Proposals for decisions on specific activities to be carried out at, or in the immediate vicinity of, the external border of any particular Member State shall require a vote in favour of their adoption by the Member of the Management Board representing that Member State.

4. The Management Board may advise the Executive Director on any matter strictly related to the development of operational management of the external borders, including ~~follow-up~~ ***activities related*** to research as defined in Article 6.

5. Should Ireland and/or the United Kingdom request to participate in the Agency's activities, the Management Board shall decide thereon.

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

6. The Management Board shall forward annually to the budgetary authority any information relevant to the outcome of the evaluation procedures.

7. The Management Board may establish an Executive Bureau to assist it and the Executive Director with regard to the preparation of the decisions, programmes and activities to be adopted by the Management Board and when necessary, because of urgency, to take certain provisional decisions on behalf of the Management Board.

#### *Article 21*

### **Composition of the Management Board**

1. Without prejudice to paragraph 3, the Management Board shall be composed of one representative of each Member State and two representatives of the Commission. To this effect, each Member State shall appoint a member of the Management Board as well as an alternate who will represent the member in his/her absence. The Commission shall appoint two members and their alternates. The duration of the terms of office shall be four years. This term of office shall be extendable ~~once~~.

2. The Management Board members shall be appointed on the basis of their degree of high level relevant experience and expertise in the field of operational cooperation on border management.

3. Countries associated with the implementation, application and development of the Schengen acquis shall participate in the Agency. They shall have one representative and an alternate each in the Management Board. Under the relevant provisions of their association agreements, arrangements ~~[will be]~~ **have been** developed which ~~[shall, *inter alia*,~~] specify the nature and extent of, and the detailed rules for, the participation by these countries in the work of the Agency, including provisions on financial contributions and staff.

#### *Article 22*

### **Chairmanship of the Management Board**

1. The Management Board shall elect a Chairperson and a Deputy Chairperson from among its members. The Deputy Chairperson shall ex-officio replace the Chairperson in the event of his/her being prevented from attending to his/her duties.

2. The term of office of the Chairperson and Deputy Chairperson shall expire when their respective membership of the Management Board ceases. Subject to this provision, the duration of the terms of office of the Chairperson or Deputy Chairperson shall be two years. These terms of office shall be extendable once.

#### *Article 23*

### **Meetings**

1. Meetings of the Management Board shall be convened by its Chairperson.

2. The Executive Director of the Agency shall take part in the deliberations.
3. The Management Board shall hold at least two ordinary meetings a year. In addition, it shall meet at the instance of the Chairperson or at the request of at least one third of its members.
4. Ireland and the United Kingdom shall be invited to attend the meetings of the Management Board.
5. The Management Board may invite any other person whose opinion may be of interest to attend its meetings as an observer.
6. The members of the Management Board may, subject to the provisions of its Rules of Procedure, be assisted by advisers or experts.
7. The secretariat for the Management Board shall be provided by the Agency.

*Article 24*  
**Voting**

1. Without prejudice to Article 20(2)(c) as well as 26(2) and (4), the Management Board shall take its decisions by an absolute majority of its members with a right to vote.
2. Each member shall have one vote. The Executive Director of the Agency shall not vote. In the absence of a member, his/her alternate shall be entitled to exercise his/her right to vote.
3. The rules of procedure shall establish the more detailed voting arrangements, in particular, the conditions for a member to act on behalf of another member as well as any quorum requirements, where appropriate.

*Article 25*  
**Functions and powers of the Executive Director**

1. The Agency shall be managed by its Executive Director, who shall be completely independent in the performance of his/her duties. Without prejudice to the respective competencies of the Commission, the Management Board and the Executive Bureau, the Executive Director shall neither seek nor take instructions from any government or from any other body.
2. The European Parliament or the Council may invite the Executive Director of the Agency to report on the carrying out of his/her tasks, ***in particular on the implementation and monitoring of the Fundamental Rights Strategy, the general report of the Agency for the previous year, the work programme for the coming year and the Agency's multi-annual plan referred to in Article 20(i).***
3. The Executive Director shall have the following functions and powers:
  - (a) to prepare and implement the decisions and programmes and activities adopted by the Agency's Management Board within the limits specified by this Regulation, its implementing rules and any applicable law;
  - (b) to take all necessary steps, including the adoption of internal administrative instructions and the publication of notices, to ensure the functioning of the Agency in accordance with the provisions of this Regulation;

(c) to prepare each year a draft working programme and an activity report and submit them to the Management Board;

(d) to exercise in respect of the staff the powers laid down in Article 17 (2);

(e) to draw up estimates of the revenues and expenditure of the Agency pursuant to Article 29, and implement the budget pursuant to Article 30;

(f) to delegate his/her powers to other members of the Agency's staff subject to rules to be adopted in accordance with the procedure referred to in Article 20(2)(g).

**(g) Ensure the implementation of the operational plan referred to in Articles 3a and 8g.**

4. The Executive Director shall be accountable for his activities to the Management Board.

#### *Article 26*

#### **Appointment of senior officials**

1. The Commission shall propose candidates for the post of the Executive Director based on a list following publication of the post in the *Official Journal of the European Union* and other press or internet sites as appropriate.

2. The Executive Director of the Agency shall be appointed by the Management Board on the grounds of merit and documented administrative and management skills, as well as his/her relevant experience in the field of management of the external borders. The Management Board shall take its decision by a two-thirds majority of all members with a right to vote.

Power to dismiss the Executive Director shall lie with the Management Board, according to the same procedure.

3. The Executive Director shall be assisted by a Deputy Executive Director. If the Executive Director is absent or indisposed, the Deputy Executive Director shall take his/her place.

4. The Deputy Executive Director shall be appointed by the Management Board on the grounds of merit and documented administrative and management skills, as well as his/her relevant experience in the field of management of the external borders on the proposal of the Executive Director. The Management Board shall take its decision by a two-thirds majority of all members with a right to vote.

Power to dismiss the Deputy Executive Director shall be with the Management Board, according to the same procedure.

5. The terms of the offices of the Executive Director and the Deputy Executive Director shall be five years. They may be extended by the Management Board once for another period of up to five years.

#### *Article 26a*

#### **Fundamental Rights Strategy**

**1. The Agency shall draw up and further develop and implement its Fundamental Rights Strategy. The Agency shall put in place an effective mechanism to monitor the respect for fundamental rights in all the activities of the Agency.**

**2. A Consultative Forum shall be established by the Agency to assist the Director and the Management Board in fundamental rights matters. The Agency shall invite the European Asylum Support Office, the Fundamental Rights Agency, the United Nations High Commissioner for Refugees and other relevant organisation to participate in the Consultative Forum. On the proposal of the Executive Director, the Management Board shall decide on the composition and the working methods of and the modalities of the transmission of information to the Consultative Forum.**

**The Consultative Forum shall be consulted on the further development and implementation of the Fundamental Rights Strategy, Code of conduct and Common Core Curriculum.**

**The Consultative Forum shall prepare an annual report of its activities. Those reports shall be made publically available.**

**3. A Fundamental Rights Officer shall be designated by the Management Board of the Agency. He/she shall have the necessary qualifications and experience in the field of fundamental rights. He/she shall be independent in the performance of his/her duties as a Fundamental Rights Officer and shall report directly to the Management Board and the Consultative Forum. He/she shall report on a regular basis and as such contribute to the mechanism for monitoring fundamental rights.**

**4. The Fundamental Rights Officer and the Consultative Forum shall have access to all information concerning respect for fundamental rights, in relation to all the activities of the Agency.**

#### *Article 27* **Translation**

1. The provisions laid down in Regulation No 1 of 15 April 1958 determining the languages to be used in the European Economic Community (1) shall apply to the Agency.

2. Without prejudice to decisions taken on the basis of Article 290 of the Treaty, the general report and programme of work referred to in Article 20(2)(b) and (c), shall be produced in all official languages of the Community.

3. The translation services required for the functioning of the Agency shall be provided by the Translation Centre for the bodies of the European Union.

#### *Article 28* **Transparency and communication**

1. Six months after the entry into force of this Regulation, the Agency shall be subject to Regulation (EC) No 1049/2001 when handling applications for access to documents held by it.

2. The Agency may communicate on its own initiative in the fields within its mission. It shall ensure in particular that, in addition to the publication specified in Article 20(2)(b), the public and any interested party are rapidly given objective, reliable and easily understandable information with regard to its work.

3. The Management Board shall lay down the practical arrangements for the application of paragraphs 1 and 2.



4. Any natural or legal person shall be entitled to address himself/herself in writing to the Agency in any of the languages referred to in Article 314 of the Treaty. He/she shall have the right to receive an answer in the same language.

5. Decisions taken by the Agency pursuant to Article 8 of Regulation (EC) No 1049/2001 may give rise to the lodging of a complaint to the Ombudsman or form the subject of an action before the Court of Justice of the European Communities, under the conditions laid down in Articles 195 and 230 of the Treaty respectively.

## CHAPTER IV FINANCIAL REQUIREMENTS

### *Article 29* **Budget**

1. The revenue of the Agency shall consist, without prejudice to other types of income, of:
  - a subsidy from the Community entered in the general budget of the European Union (Commission section),
  - a contribution from the countries associated with the implementation, application and development of the Schengen acquis,
  - fees for services provided,
  - any voluntary contribution from the Member States.
2. The expenditure of the Agency shall include the staff, administrative, infrastructure and operational expenses.
3. The Executive Director shall draw up an estimate of the revenue and expenditure of the Agency for the following financial year and shall forward it to the Management Board together with an establishment plan.
4. Revenue and expenditure shall be in balance.
5. The Management Board shall adopt the draft estimate, including the provisional establishment plan accompanied by the preliminary work programme, and forward them by 31 March to the Commission and to the countries associated with the implementation, application and development of the Schengen acquis.
6. The estimate shall be forwarded by the Commission to the European Parliament and the Council (hereinafter referred to as the budgetary authority) together with the preliminary draft budget of the European Union.
7. On the basis of the estimate, the Commission shall enter in the preliminary draft general budget of the European Union the estimates it deems necessary for the establishment plan and the amount of the subsidy to be charged to the general budget, which it shall place before the budgetary authority in accordance with Article 272 of the Treaty.
8. The budgetary authority shall authorise the appropriations for the subsidy to the Agency.

The budgetary authority shall adopt the establishment plan for the Agency.

9. The Management Board adopts the Agency's budget. It shall become final following the final adoption of the general budget of the European Union. Where appropriate, it shall be adjusted accordingly.

10. Any modification to the budget, including the establishment plan, shall follow the same procedure.

11. The Management Board shall, as soon as possible, notify the budgetary authority of its intention to implement any project, which may have significant financial implications for the funding of its budget, in particular any projects relating to property such as the rental or purchase of buildings. It shall inform the Commission thereof as well as the countries associated with the implementation, application and development of the Schengen acquis.

Where a branch of the budgetary authority has notified its intention to deliver an opinion, it shall forward its opinion to the Management Board within a period of six weeks from the date of notification of the project.

### *Article 30*

#### **Implementation and control of the budget**

1. The Executive Director shall implement the Agency's budget.

2. By 1 March at the latest following each financial year, the Agency's accounting officer shall communicate the provisional accounts to the Commission's accounting officer together with a report on the budgetary and financial management for that financial year. The Commission's accounting officer shall consolidate the provisional accounts of the institutions and decentralised bodies in accordance with Article 128 of Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities (1) (hereafter referred to as the general Financial Regulation).

3. By 31 March at the latest following each financial year, the Commission's accounting officer shall forward the Agency's provisional accounts to the Court of Auditors, together with a report on the budgetary and financial management for that financial year. The report on the budgetary and financial management for that financial year shall also be forwarded to the European Parliament and the Council.

4. On receipt of the Court of Auditors' observations on the Agency's provisional accounts, pursuant to Article 129 of the general Financial Regulation, the Director shall draw up the Agency's final accounts under his/her own responsibility and forward them to the Management Board for an opinion.

5. The Management Board shall deliver an opinion on the Agency's final accounts.

6. By 1 July of the following year at the latest, the Executive Director shall send the final accounts, together with the opinion of the Management Board, to the Commission, the Court of Auditors, the European Parliament and the Council as well as the countries associated with the implementation, application and development of the Schengen acquis.

7. The final accounts shall be published.

8. The Director shall send the Court of Auditors a reply to its observations by 30 September at the latest. He shall also send this reply to the Management Board.

9. Upon a recommendation from the Council, the European Parliament shall, before 30 April of the discharge year + 2, give a discharge to the Executive Director of the Agency in respect of the implementation of the budget for the discharge year.

*Article 31*  
**Combating fraud**

1. In order to combat fraud, corruption and other unlawful activities the provisions of Regulation (EC) No 1073/1999 shall apply without restriction.
2. The Agency shall accede to the Interinstitutional Agreement of 25 May 1999 and shall issue, without delay, the appropriate provisions applicable to all the employees of the Agency.
3. The decisions concerning funding and the implementing agreements and instruments resulting from them shall explicitly stipulate that the Court of Auditors and OLAF may carry out, if necessary, on-the-spot checks among the recipients of the Agency's funding and the agents responsible for allocating it.

*Article 32*  
**Financial provision**

The financial rules applicable to the Agency shall be adopted by the Management Board after consultation of the Commission. They may not depart from Commission Regulation (EC, Euratom) No 2343/2002 on the framework Financial Regulation for the bodies referred to in Article 185 of the general Financial Regulation, unless specifically required for the Agency's operation and with the Commission's prior consent.

CHAPTER V  
**FINAL PROVISIONS**

*Article 33*  
**Evaluation**

1. Within three years from the date of the Agency having taken up its responsibilities, and every five years thereafter, the Management Board shall commission an independent external evaluation on the implementation of this Regulation.
2. The evaluation shall examine how effectively the Agency fulfils its mission. It shall also assess the impact of the Agency and its working practices. The evaluation shall take into account the views of stakeholders, at both European and national level.
  - 2a. The next evaluation shall also analyse the needs for further increased coordination of the management of the external borders of the Member States, including the feasibility of the creation of a European system of border guards.***
  - 2b. The evaluation shall include a specific analysis on the way the Charter of Fundamental Rights was respected pursuant to the application of the Regulation.***
3. The Management Board shall receive the findings of the evaluation and issue recommendations regarding changes to this Regulation, the Agency and its working practices to the Commission, which shall forward them, together with its own opinion as well as appropriate proposals, to the Council. An action plan with a timetable shall be included, if appropriate. Both the findings and the recommendations of the evaluation shall be made public.

*Article 34*  
**Entry into force**

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

The Agency shall take up its responsibilities from 1 May 2005. This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaty establishing the European Community.

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