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Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND THE COUNCIL

amending Council Regulation (EC) No 2007/2004 establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (FRONTEX)

{SEC(2010) 149}

{SEC(2010) 150}

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

Grounds for and objectives of the proposal

This proposal addresses amendments to Council Regulation (EC) No 2007/2004 establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (FRONTEX) that are necessary in order to ensure a well defined and correct functioning of the Frontex Agency in the coming years. The objective of the proposal is to adapt the Regulation, in the light of the evaluations carried out and practical experiences, to clarify the mandate of the Agency and to address identified shortcomings.

General context

The Frontex Agency was set up in 2004 and became operational in 2005. As requested by the Hague programme the Commission adopted on 13 February 2008 a Communication on the evaluation and future development of the FRONTEX Agency (COM(2008) 67 final), accompanied by a impact assessment.

The Communication issued recommendations for the short to medium term and launched ideas for the future development of the Agency in the longer term.

The 2008 Communication was welcomed by the Council and the European Parliament, who both shared the Commissions assessment that the Agency had been very successful since its inception and called for a further strengthening of the Agency. This ambition has been further reflected in numerous conclusions by the Council and the European Council, in the Pact on immigration and asylum, and in the Stockholm programme, adopted by the European Council of 10-11 December 2009 calling for a reinforcement of the Agency including through a revision of its legal framework. The role of the Agency in the integrated border management of the Union, and its overall future direction, is therefore subject to a strong interinstitutional consensus.

In addition to the abovementioned Commission Report on the evaluation and future development of the FRONTEX Agency an independent evaluation took place during 2008, as requested by Article 33 of the Frontex Regulation. On the basis of this evaluation the Frontex Management Board addressed a series of recommendations concerning changes to the legal basis of the Agency to the Commission.

This proposal reflects all recommendations of the 2008 Communication and the Management Board recommendations to the extent they require a revision of the legal framework of the Agency, with the exceptions as described in the impact assessment.

Existing provisions

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.

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.

Council Decision 2005/358/EC of 26 April 2005 designating the seat of the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union.

2. CONSULTATION OF INTERESTED PARTIES AND IMPACT ASSESSMENT

In the follow-up to the Communication extensive discussions were held in the Council and the European Parliament. Civil society and academia also organised discussions on the role of Frontex in the context of the Union's immigration policy.

Regular discussions and information exchange have taken place with Member States in the context of the Management Board meetings of the Agency. The Agency has continuously reported on its activities in the Management Board, in the institutions, and through the various reports foreseen by the legal basis. Moreover, consultations have taken place between Commission officials dealing with the FRONTEX Agency and their counterparts in the Agency.

Frontex, in association with the Austrian authorities, organised a workshop for the members or representatives of the Management Board, chaired by the Commission, on the review of the legal framework of the Agency on 10 September 2009 in Baden, Austria. The Commission also consulted Member States in the Committee on Immigration and Asylum in its meeting on 5 October 2008.

Impact assessment

An impact assessment has been carried out - Commission staff working document SEC(2010) 149. Suboptions in relation to the following "building blocks", reflecting core objectives and activities of the Agency, have been assessed:

- Revising existing provisions on the use of technical equipment in joint operations, including the mechanisms for contributions from the Member States of such equipment;
- Mechanisms to improve the availability of border guards in joint operations;
- Revising the role of the Agency in preparing, coordinating and implementing operations, including with regard to the sharing of tasks between the Agency and the Member States;
- Expanding the mandate of the Agency in cooperating with third countries on border management;
- Mandating the Agency to collect and process personal data;
- Revising the mandate of the Agency as concerns return operations;
- Mandating the Agency to contribute to evaluating the performance of Member States in the area of border management.

The policy options were assessed against the following criteria:

- Does the option contribute to meeting the identified shortcoming, ie to better reaching the relevant objective(s)?
- Does the option have an impact on third countries?
- Does the option have a budgetary impact on the Agency or on the Member States?
- What are the possible impacts on fundamental rights?

The preferred option of the impact assessment consists of a combination of the following suboptions:

- A revised mechanism with compulsory contributions of equipment from Member States combined with the gradual acquisition/leasing by Frontex of its own equipment, based on further analyses of needs and costs;
- A revised mechanism with compulsory contributions of human resources from Member States combined with a pool of border guards on semi-permanent detachment from Member States to Frontex, with the status of national experts;
- Awarding the Agency a co-leading role for the implementation of joint operations, with detailed rules for the operational plan, evaluation, and incident reporting, to be enforced by Frontex;
- Allowing Frontex to finance and implement technical assistance projects in third countries and to deploy liaison officers in third countries;
- Giving Frontex a limited mandate to process personal data related to fight against criminal networks organising illegal immigration, under condition that such processing of personal data by Frontex is lawful, necessary and proportionate in relation to the tasks of the Agency;
- Giving Frontex a coordinating role in implementing joint return operations;
- Giving Frontex a mandate to analyse operational risks and requirements in the Member States.

Following the opinions of the impact assessment board of 8 December 2009 and 11 January 2010, the impact assessment has been revised substantially especially with regard to the problem definition and baseline, the definition of the general and operational objectives, the sections related to subsidiarity and proportionality, and costs.

The preferred option is fully reflected in this legislative proposal with the exception of giving Frontex a limited mandate to process personal data related to fighting criminal networks organising illegal immigration. The Commission does consider that all possibilities to reinforce the fight against the smuggling of migrants and against trafficking of human beings should be explored. However, it prefers to return to the question of personal data in the context of the overall strategy for information exchange to be presented later this year and also taking into account the reflection to be carried out on how to further develop cooperation

between Agencies in the justice and home affairs field as requested by the Stockholm programme.

3. LEGAL ELEMENTS OF THE PROPOSAL

Summary

The most important proposed amendments to Council Regulation (EC) No 2007/2004 reflect the changes necessary to accommodate the preferred option of the impact assessment. Moreover a number of minor amendments of an essentially administrative character have been introduced taking into account the Management Board recommendations as well as the introduction of new "standard" provisions used in other Commission proposals for the setting up of new Agencies.

Legal basis

Articles 74 and 77 (1) (b) and (c) of the Treaty on the Functioning of the European Union.

This proposal amends Council Regulation (EC) No 2007/2004 establishing the Frontex Agency, which has been amended in 2007 by Regulation (EC) No 863/2007 of the European Parliament and of the Council establishing a mechanism for the creation of Rapid Border Intervention Teams, which were based on the equivalent provisions of the Treaty establishing the European Community, that is, Articles 62(2)(a) and 66.

Subsidiarity principle

Article 74 provides that the Council shall adopt measures to ensure administrative cooperation between the relevant departments of the Member States in the areas covered by this Title, as well as between those departments and the Commission.

Article 77(1)(b) and (c) empowers the Union to develop a policy with a view to carrying out checks on persons and efficient monitoring of the crossing of external borders, and the gradual introduction of an integrated management system for external borders.

The current proposal is within the limits set by these provisions and, in particular, respects the shared competencies of the Treaty in that Member States remain responsible for controlling their external borders. Notably this proposal upholds the principle that in the context of operations coordinated by the Agency, 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. Decisions to refuse entry in accordance with the Schengen Borders Code shall be taken only by border guards of the host Member State. No decision-making power in this regard is transferred to the Agency.

The objectives of this proposal, while respecting the same fundamental limitations of the existing provisions, are to further develop an integrated management of operational cooperation, cannot be sufficiently achieved by the Member States.

Proportionality principle

Article 5 of the Treaty on European Union states that action by the EU must not go beyond what is necessary to achieve the objectives of the Treaty. The form chosen for this Union

action must enable the proposal to achieve its objective and be implemented as effectively as possible.

The proposed initiative — amendment of the Regulation — constitutes a further development of the Schengen *acquis* combating the organisation of illegal immigration and ensures cooperation between the relevant departments of the administrations of the Member States, as well as between those departments and the Commission. The proposal therefore complies with the proportionality principle.

Choice of instrument

Proposed instrument: Regulation.

Other means would not be adequate as the present proposal amends a regulation.

4. BUDGETARY IMPLICATION

The proposal amends an existing Regulation regarding the mandate and functioning of a European Agency. The subsidy related to the Frontex Agency forms already part of the Union's budget.

5. ADDITIONAL INFORMATION

Consequences of the various protocols annexed to the Treaties and of the association agreements concluded with third countries

The legal basis for this proposal is to be found in Title V of Part Three of the Treaty on the Functioning of the European Union, with the result that the system of ‘variable geometry’, provided for in the protocols on the position of the United Kingdom, Ireland and Denmark and the Schengen protocol, applies. The proposal builds on the Schengen *acquis*. The following consequences in relation to the various protocols therefore have to be considered:

United Kingdom and Ireland

The United Kingdom and Ireland are not taking part in this Regulation in accordance with Article 4 of the Protocol on the Schengen *acquis* annexed to the TEU and TFEU and Article 8(2) of 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*.

Denmark

Under the Protocol on the position of Denmark, annexed to the TEU and TFEU, Denmark does not take part in the adoption by the Council of measures pursuant to Title V of part Three of the TFEU.

This proposal builds on the Schengen *acquis*, and under Article 4 of the Protocol Denmark shall decide within a period of six months after the Council has decided on a proposal or initiative to build upon the Schengen *acquis* covered by this Part whether it will implement this decision in its national law.

Iceland and Norway

As regards Iceland and Norway, this proposal constitutes a development of the provisions of the Schengen *acquis* within the meaning of the Agreement concluded by the Council of the European Union and the Republic of Iceland and the Kingdom of Norway concerning the association of those two States with the implementation, application and development of the Schengen *acquis*¹.

Switzerland

As regards Switzerland, this proposal constitutes a development of the provisions of the Schengen *acquis* within the meaning of the Agreement concluded by the European Union, the European Community and the Swiss Confederation on the latter's association with the implementation, application and development of the Schengen *acquis*².

Liechtenstein

As regards Liechtenstein, this proposal constitutes a development of the provisions of the Schengen *acquis* within the meaning of the Protocol between the European Union, the European Community, the Swiss Confederation and the Principality of Liechtenstein on the accession of the Principality of Liechtenstein to the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis*³.

Succinct overview of the proposed amendments

Article 1, Establishment of the Agency

- clarification of the legal framework in which the Agency operates

Article 1a, Definitions

- clarification of the definition of "host Member State"
- introduction of the concept of Frontex Joint Support Teams
- revision of the definition of technical equipment

Article 2, Main tasks

- para 1 (c): widening of the work related to risk analysis
- para 1 (d): strengthening the work related to research
- para 1 (f): introducing the possibility to coordinate joint return operations
- para 1 (h): new task related to the development and operation of information systems
- para 1 (i): new task related to providing assistance to Eurosur

¹ OJ L 176, 10.7.1999, p. 36.

² OJ L 53, 27.2.2008, p. 52.

³ OJ L [...], [...], p. [...].

- para 1a: obligation for all personnel taking part in e.g. joint operations or joint return operations to have received appropriate training in fundamental rights
- para 2, 3rd indent: introduction of a reporting mechanism to the Management Board regarding the operational activities of Member States with third countries.

Article 3, Joint operations and pilot projects at the external borders

- para 1: introducing an obligation to draw up an operational plan, to conduct a prior risk analysis and giving the Agency the possibility to terminate operations if the conditions are no longer fulfilled
- para 2: new - introducing the obligation for the Agency to set up a pool of border guards (FJST)
- para 4: introducing an obligation to transmit the evaluation reports of the operations to the Management Board within 60 days following the end of an operation
- para 5: possibility for increased financial support

Article 3a, Organisational aspects of joint operations and pilot projects (New)

Introducing a new article which sets out in paragraph 1 the overall conditions related to the obligation to draw up an operational plan for all operations. This article provides for provisions regarding the content and the components of the operational plan, the respective tasks and responsibilities, the composition of the teams, command and control, the reporting mechanisms i.e. evaluation and incident reporting, the technical equipment, and the applicable jurisdiction.

Paragraphs 2 and 3 provide for the obligation that the Agency and the requesting Member State agree on the operational plan and that the Agency needs to ensure the operational implementation of all organisational aspects.

Article 3b, Composition and deployment of Frontex Joint Support Teams (FJST) (New)

Introducing a new article which sets out:

Para 1 the overall conditions on the profiles and number of border guards to be made available to the FJST

Para 2 the obligation for the Agency to contribute to the FJST

Para 3 the obligation of Member States to make the border guards available for deployment

Para 4 obligation for members of the teams to perform their duties in full respect of fundamental rights and human dignity

Para 5 communication regarding FJST to take place through the national points of contact

Para 6 obligation for the Agency to nominate a coordinating officer where FJST members are deployed

Para 7 obligation for the Agency to meet the costs of border guards of Member States participating in FJST

Article 4, Risk analysis

Introducing an obligation on Member States to provide the necessary information regarding threats at the external borders.

Insertion of a new indent creating an obligation on the Agency to regularly evaluate the capacity of Member States to face upcoming challenges at the external borders.

Article 5, Training

Insertion of an obligation on Member States to integrate the common core curricula in the training of national border guards, and of an explicit reference to that the training shall, as is already the case in the work programme of Frontex, include fundamental rights aspects.

Article 6, Research

Reinforcement of the role of the Agency i.e. monitoring and contributing to developments in relevant research activities

Article 7, Technical equipment

The provisions regarding technical equipment are modified as follows:

Para 1 Clarification of the mandate of the Agency regarding the acquisition or lease of technical equipment and the rules of registration for heavy equipment

Para 2 Obligation on the Agency to set up and keep centralised records of a Technical Equipment Pool (TEP)

Para 3 Obligation on Member States to contribute to the TEP to allow for a minimum amount of equipment covering the needs of the Agency

Para 4 Rules regarding the management by the Agency of the TEP

Para 5 Rules for the reimbursement of the minimum numbers per type of equipment, the conditions for deployment and the eligible costs

Para 6 reporting obligation on the composition and deployment of equipment part of the TEP by the Agency and subsequent action of the Management Board

Article 8, Support to Member States in circumstances requiring increased technical and operational assistance at the external borders

Deleted, as this is now sufficiently covered by the provisions on joint operations, technical equipment, and Frontex Joint Support Teams.

Article 8e, Operational plan

Para 1: adjustments necessary following the provisions of the new Article 3a

Article 8h, Costs

Para 1 insertion of a provision for the reimbursement of costs of the FJST

Article 9, Return cooperation

Para 1 clarification of the EU return policy, financial provisions and insertion of the possibility for a Member State to request the Agency to ensure the coordination of a return operation.

Para 2-3 obligation for the Agency to adopt a Code of Conduct to be applied during joint return operations, including with regard to forced return monitoring and respect for fundamental rights.

Para 4 obligation on Member States to inform the Agency of their planned return operations and the degree of assistance requested from the Agency. Obligation on the Agency to draw up a rolling operational plan on which the Management Board decides.

Para 5 Clarification of the role of the Agency regarding the identification of the relevant third countries

Article 11, Information exchange systems

Modification of the role of the Agency i.e. obligation to facilitate the exchange of information.

Insertion of an obligation on the Agency to develop and operate an information system capable of exchanging classified information.

Article 11a, Data protection (New)

Obligation on the Agency to process data in accordance with Regulation 45/2001 and on the Management Board to establish measures to apply the aforementioned Regulation.

Article 11b, Security rules on the protection of classified information and non-classified sensitive information (New)

Obligation on the Agency to apply the security principles of Decision 2001/844 for classified information. Obligation to process non-classified sensitive information as adopted and implemented by the Commission.

Article 13, Cooperation with European Union agencies and bodies and international organisations

Insertion of the possibility to cooperate with other European Union agencies and bodies.

Article 14, Facilitation of operational cooperation with third countries and cooperation with competent authorities of third countries

Insertion of the following paragraphs:

Para 2 possibility for the Agency to deploy liaison officers in third countries

Para 3 description of the tasks of the liaison officers

Para 4 possibility for the Agency to benefit from Union funding, to launch technical assistance project in third countries and to invite observers.

Para 5 obligation on Member States to clarify where appropriate the role of the Agency in their bilateral agreements with third countries

Para 7 the deployment of liaison officers and the conclusion of working arrangements with third countries are subject to prior approval by the Commission

Article 15a, Headquarters Agreement (New)

Clarification of the need and conditions for a Headquarters Agreement between the Agency and the hosting Member State.

Article 17, Staff

Para 3 clarification of the role of the staff of the Agency providing for qualified staff to participate in operational activities

Article 20, Powers of the Management Board

Para 2 (h) prior agreement of the Commission necessary to adopt/modify the organisational structure and staffing policy of the Agency (new)

Para 2 (i) insertion of a provision regarding the endorsement of the Multiannual Plan of the Agency (new)

Para 4 reflecting the reinforced role of the Agency regarding relevant research activities

Article 21, Composition of the Management Board

Para 1 deletion of the restriction on the extendibility of the term of office

Para 3 insertion of a reference to the concluded association agreements

Article 25, Functions and powers of the Executive Director

Para 3 (g) insertion of the obligation to implement the operational plans.

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND THE COUNCIL

amending Council Regulation No 2007/2004 establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (FRONTEX)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Articles 74 and 77 (1) (b) and (c) thereof,

Having regard to the proposal from the European Commission,

Having regard to the Opinion of the European Economic and Social Committee

After transmission of the proposal to the national Parliaments,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) The development of a forward-looking and comprehensive European migration policy, based on solidarity and responsibility, remains a key policy objective for the European Union.
- (2) Union policy in the field of the 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 the external borders is foreseen.
- (3) The efficient implementation of the common rules calls for increased coordination of the operational cooperation between the Member States.
- (4) This Regulation respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union, notably 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, right to asylum, non-refoulement, non discrimination, the rights of the child and right to an effective remedy. This Regulation should be applied by the Member States in accordance with these rights and principles.

- (5) In 2004 the Council adopted Regulation (EC) No 2007/2004 establishing the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (Frontex)⁴ hereinafter referred to as the "Agency" which became operational in May 2005.
- (6) Regulation (EC) No 2007/2004 was amended in 2007 by Regulation (EC) No 863/2007 establishing a mechanism for the creation of Rapid Border Intervention Teams⁵.
- (7) Efficient management of the external borders through checks and surveillance contributes to combat illegal immigration and trafficking in human beings and to reduce the threats to the internal security, public policy, public health and international relations of the Member States.
- (8) Border control at the external borders is in the interest not only of the Member State at whose external borders it is carried out but of all Member States which have abolished internal border control.
- (9) The Multiannual programme for an area of Freedom, Security and Justice serving the citizen adopted by the European Council on 10/11 December 2009 (the Stockholm Programme) calls upon a clarification and enhancement of the role of Frontex regarding the management of the external borders of the European Union.
- (10) The mandate of the Agency should therefore be revised in order to strengthen in particular the operational capabilities of the Agency while ensuring that all measures taken are proportionate to the objectives pursued and fully respect fundamental rights and the rights of refugees and asylum seekers, including in particular the prohibition of *refoulement*.
- (11) Current possibilities for providing effective assistance to the Member States regarding the operational aspects of external border management should be reinforced as concerns the available technical resources; the Agency must be able to plan with sufficient accuracy the coordination of joint operations or pilot projects.
- (12) Minimum levels of necessary technical equipment provided on a compulsory basis by the Member States and/or the Agency will largely contribute to a better planning and implementation of the envisaged operations coordinated by the Agency.
- (13) The Agency should manage lists of technical equipment provided by the Member States and by the Agency, thereby contributing to the "pooling" of material resources. These lists should contain the minimum numbers of categories of technical equipment necessary to enable the Agency to conduct its activities.
- (14) To ensure effective operations, Member States should make an appropriate number of skilled border guards available to participate in joint operations and pilot projects. Teams of border guards for deployment by the Agency should therefore be set up.

⁴ OJ L 349, 25.11.2004, p. 1.

⁵ OJ L 199, 31.7.2007, p. 30.

- (15) The Agency should be able to contribute to those teams with border guards seconded by Member States to the Agency on a semi-permanent basis, which shall be subject, in the exercise of their tasks and powers, to the same legal framework as the guest officers contributed directly to the Teams by Member States. The Agency should adapt its internal rules on seconded national experts to allow for direct instructions by the host state to the border guards during joint operations and pilot projects.
- (16) A well defined operational plan, including an evaluation and an obligation to report incidents, agreed prior to the start of the operations amongst participating Member States and the Agency will largely contribute to the objectives of this Regulation with a more harmonised modus operandi regarding the coordination of operations.
- (17) The incident reporting scheme shall be used by the Agency to transmit, to the relevant public authorities and the Management Board, any information concerning credible allegations of breaches of, in particular, Regulation (EC) No 2007/2004 or the Schengen Borders Code, including fundamental rights, during joint operations and pilot projects.
- (18) Risk analysis has demonstrated to be a key element for conducting operations at the external borders. Its quality should be improved by adding a method for evaluating the national structures, equipment and resources that Member States have at their disposal.
- (19) The Agency should provide training, including on fundamental rights, at European level for national instructors of border guards and additional training and seminars related to control and surveillance at the 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. Member States should integrate the results of the Agency's work in this perspective in the national training programs of their border guards.
- (20) The Agency should monitor and contribute to the developments in scientific research relevant for its field and disseminate this information to the Commission and the Member States.
- (21) 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 the external borders. As there is a clear added value in performing these tasks at Union level, the Agency should, in full compliance with the Union's return policy, accordingly provide the necessary assistance and coordination for organising joint return operations of Member States and identify best practices on the acquisition of travel documents and define a Code of Conduct to be followed during the removal of third-country nationals illegally present in the territories of the Member States. No Union financial means should be made available for activities and operations that are not carried out in conformity with the Charter of Fundamental Rights.
- (22) 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 European Asylum Support Office, the Fundamental Rights Agency and other European Union Agencies and bodies, the competent authorities of third countries and the international organisations competent in matters covered by Regulation (EC) No 2007/2004 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.

- (23) Cooperation with third countries regarding matters covered by Regulation (EC) No 2007/2004 is increasingly important. To establish a solid cooperation model with relevant third countries the Agency should have the possibility to launch and finance projects of technical assistance and to deploy liaison officers in third countries. The Agency should have the possibility to invite representatives of third countries to participate in its activities, after having provided the necessary training. Establishing cooperation with third countries is relevant also with regards to promoting the European standards of border management, including the respect of fundamental rights and human dignity.
- (24) In order to ensure open and transparent employment conditions and equal treatment of staff, the Staff Regulations of Officials of the European Communities and the Conditions of Employment of Other Servants of the European Communities ("the Staff Regulations") should apply to the staff and to the Executive Director of the Agency, including the rules of professional secrecy or other equivalent duties of confidentiality.
- (25) 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 data⁶ applies to the processing of personal data by the Agency. The European Data Protection Supervisor should therefore monitor the processing of personal data by the Agency and have the power to obtain from the Agency access to all information necessary for his or her enquiries.
- (26) As far as the Member States are processing personal data, Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data⁷ fully applies.
- (27) When ensuring the operational management of IT systems, the Agency should follow European and international standards taking into account the highest professional requirements.
- (28) 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 Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. 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.

⁶ OJ L 8, 12.1.2001, p. 1.

⁷ OJ L 281, 23.11.1995, p. 31.

- (29) 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/EC⁸ 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.
- (30) As regards Switzerland, this Regulation constitutes a development of the provisions of the Schengen acquis within the meaning of the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen acquis⁹, which fall within the area referred to in Article 1, points A, B and G of Decision 1999/437/EC read in conjunction with Article 3 of Council Decision 2008/146/EC on the conclusion, on behalf of the European Community, of the Agreement.
- (31) As regards Liechtenstein, this Regulation constitutes a development of the provisions of the Schengen acquis within the meaning of the Protocol between the European Union, the European Community, the Swiss Confederation and the Principality of Liechtenstein on the accession of the Principality of Liechtenstein to the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen acquis which fall within the area referred to in Article 1, points A, B and G of Council Decision 1999/437/EC of 17 May 1999 read in conjunction with Article 3 of Council Decision 2008/261/EC¹⁰.
- (32) Under the Protocol on the position of Denmark, annexed to the Treaty on European Union and the Treaty on the Functioning of the European Union, Denmark does not take part in the adoption by the Council of the measures pursuant to Title V of Part Three of the Treaty on the Functioning of the European Union, with the exception of “measures determining the third countries whose nationals must be in possession of a visa when crossing the external borders of the Member States, or measures relating to a uniform format for visas”. This proposal builds on the Schengen acquis, and under Article 4 of the Protocol on the position of Denmark, Denmark shall decide within a period of six months after the Council has decided on a proposal or initiative to build upon the Schengen acquis under the provisions of Title V of Part Three of the Treaty on the Functioning of the European Union whether it will implement this decision in its national law”.
- (33) 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

⁸ OJ L 176, 10.7.1999, p. 31.

⁹ OJ L 53, 27.2.2008, p. 52.

¹⁰ OJ L 83, 26.3.2008, p. 3.

acquis¹¹. The United Kingdom is therefore not taking part in its adoption and is not bound by it or subject to its application.

- (34) 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 acquis¹². Ireland is therefore not taking part in its adoption and is not bound by it or subject to its application.
- (35) 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.
- (36) A controversy exists between the Kingdom of Spain and the United Kingdom on the demarcation of the borders of Gibraltar.
- (37) 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,

HAVE ADOPTED THIS REGULATION:

Article 1
Amendment

Regulation (EC) No 2007/2004 is amended as follows:

- (1) In Article 1 paragraph 2 is replaced by the following:

"2. While considering that the responsibility for the control and surveillance of external borders lies with the Member States, the Agency shall facilitate and render more effective the application of existing and future European Union measures relating to the management of external borders, in particular the Schengen Borders Code¹³, and in accordance with relevant Union law, International law, obligations related to access to international protection, and fundamental rights. 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."

¹¹ OJ L 131, 1.6.2000, p. 43.

¹² OJ L 64, 7.3.2002, p. 20.

¹³ OJ L 105 13.4.2006, p. 1.

(2) Article 1a is amended as follows:

(a) point 2 is replaced by the following:

"2. "host Member State" means a Member State on the territory of which, or adjacent to, a deployment of a Rapid Border Intervention Team or a joint operation or a pilot project takes place;"

(b) point 4 is replaced by the following:

"4. "members of the teams" means border guards of Member States serving with the Rapid Border Intervention Team or the Frontex Joint Support Team other than those of the host Member State;"

(c) the following point 7 is added:

"7. "technical equipment" means any kind of technical equipment deployed during joint operations, pilot projects, Rapid Border Intervention Teams, return operations or technical assistance projects."

(3) Article 2 is amended as follows:

(a) paragraph 1 is amended as follows:

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

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

(d) participate in the development of research relevant for the control and surveillance of external borders;"

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

"(f) provide Member States with the necessary support, including, upon request, coordination regarding organising joint return operations;"

(iii) the following points (h) and (i) are added:

"(h) develop and operate 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/EC¹⁴;

(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."

¹⁴ OJ L 83, 1.4.2005, p. 48.

(b) the following paragraph 1a is inserted:

"All border guards and other personnel of the Member States, 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 EU and international law, including fundamental rights and access to international protection."

(c) In paragraph 2 the last subparagraph is replaced by the following:

"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."

(4) Article 3 is replaced by the following:

"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.

The Agency may itself initiate joint operations and pilot projects in cooperation with 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.

The Agency may also terminate joint operations and pilot projects if the conditions to conduct these initiatives are no longer fulfilled.

2. The Agency shall constitute a pool of border guards called Frontex Joint Support 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.
3. The Agency may operate through its specialised branches provided for in Article 16, for the practical organisation of joint operations and pilot projects.
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. 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).

5. The Agency may decide to finance or co-finance the joint operations and pilot projects referred to in paragraph 1, with grants from its budget in accordance with the financial rules applicable to the Agency."
- (5) The following Articles 3a, 3b and 3c are inserted:

"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 shall agree on the operational plan detailing the organisational aspects in due time before the envisaged beginning of the activity.

The operational plan shall include 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;
 - (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;
 - (h) a reporting and evaluation scheme containing detailed provisions on incident reporting, 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 requirements regarding the applicable jurisdiction and maritime law provisions concerning the geographical area where the joint operation takes place.
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, of joint operations and pilot projects referred to in this Article.

Article 3b

Composition and deployment of Frontex Joint Support 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 Frontex Joint Support 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 Frontex Joint Support Teams via a national pool on the basis of the various defined profiles by nominating border guards corresponding to the required profiles.
2. The Agency shall also contribute to the Frontex Joint Support Teams with competent border guards seconded by the Member States as national experts pursuant to Article 17(5). To that effect Member States shall contribute by seconding border guards to the Agency as national experts. 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.
3. 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 thirty 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.
4. Members of the Frontex Joint Support Teams shall, in the performance of their tasks and in the exercise of their powers, fully respect fundamental rights 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, members of the teams 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 Frontex Joint Support Team members will be deployed.

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

Article 3c

Instructions to the Frontex Joint Support Teams

1. During deployment of Frontex Joint Support 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 Frontex Joint Support Teams at all times throughout the deployment.
 4. Members of the Frontex Joint Support Teams shall, while performing their tasks and exercising their powers, remain subject to the disciplinary measures of their home Member State."
- (6) Article 4 is replaced by the following:

"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 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 regularly evaluate the capacity of the Member States to face upcoming challenges, including present and future threats and pressures at the external borders of the European Union. Therefore the Agency shall evaluate the national structures, the equipment and the resources of the Member States regarding border control. . The results of these evaluations shall be presented at least once per year to the Management Board of the Agency.

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."

- (7) In Article 5 the first paragraph is replaced by the following:

"The Agency shall establish and further develop common core curricula 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.

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

(8) Articles 6 and 7 are replaced by the following:

"Article 6

Monitor and contribute to research

The Agency shall monitor and contribute to the developments in research relevant for the control and surveillance of the external borders and disseminate this information to the Commission and the Member States.

Article 7

Technical equipment

1. The Agency may acquire or lease technical equipment for external border control to be deployed during joint operations, pilot projects, Rapid Border Intervention Teams, return operations or technical assistance projects in accordance with the financial rules applicable to the Agency. Any acquisition of equipment entailing significant costs to the Agency shall be preceded by a thorough needs and cost/benefit analysis. 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, the Agency agrees formally with one Member State that the latter will provide for the registration of the equipment;
 - in case of leasing, the equipment must be registered in a Member State.

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 equipment in a technical equipment pool composed of equipment owned by Member States or by 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. 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 within 30 days for deployment at the request of the Agency, unless they are faced

with an exceptional situation substantially affecting the discharge of national tasks. Their 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 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 60% of the eligible expenses.

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 and return operations, in accordance with the work programme of the Agency for the year in question.

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 may subsequently inform the European Parliament and the Council, together with its own assessment."

(9) Article 8 is deleted.

(10) In Article 8e paragraph 1 is amended as follows:

(a) points (f) and (g) are replaced by the following:

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

Border Interventions 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, including specific requirements such as conditions for use, requested crew, transport and other logistics, and financial provisions."

(b) the following points (h) and (i) shall be added:

"(h) a reporting and evaluation scheme containing detailed provisions on incident reporting, 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 requirements regarding the applicable jurisdiction and maritime law provisions concerning the geographical area where the joint operation takes place."

(11) In Article 8h paragraph 1 is replaced by the following:

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

(12) Article 9 is replaced by the following:

"Article 9

Return cooperation

1. Subject to the return policy of the Union, and in particular Directive 2008/115/EC¹⁵, the Agency shall provide the necessary assistance, and upon request of the participating Member States ensure the coordination for organising joint return operations of Member States. The Agency may decide to 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 Union financial means 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 by air which shall apply during all joint return operations coordinated by the Agency, describing common standardized procedures which should simplify the organisation of joint return flights 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.

¹⁵ OJ L 348, 24.12. 2008, p.

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. The monitoring of joint return operations should be carried out independently and should cover the whole joint return operation from the pre-departure phase until the hand-over of the returnees in the country of return. Furthermore, observations of the monitor, which shall cover the compliance with the Code of Conduct and in particular fundamental rights, shall be made available to the Commission and form part of the internal Final Return Operation Report. In order to ensure transparency and a coherent evaluation of the forced-return operations, reports of the monitor shall be included in an annual reporting mechanism.
4. Member States shall once a month inform the Agency of their situation with regard to return and indicate to what extent the assistance or coordination of the Agency is required. 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.
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 return of illegally present third-country nationals."

(13) In Article 10, paragraph 2 is replaced by the following:

"2. While performing their tasks and exercising their powers guest officers shall comply with Union law, in accordance with fundamental rights, and the national law of the host Member State."

(14) Article 11 is replaced by the following:

"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. It shall develop and operate an information system capable of exchanging classified information with the Commission and the Member States. The exchange of information to be covered by this system shall not include the exchange of personal data."

(15) The following Articles 11a and 11b are inserted:

"Article 11a

Data protection

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.

Article 11b

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, Euratom¹⁶. 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."

(16) Articles 13 and 14 are replaced by the following:

"Article 13

Cooperation with 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.

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.

¹⁶ OJ L 317, 3.12.2001, p. 1.

2. The Agency may deploy 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' liaison officers set up pursuant to Council Regulation No 377/2004¹⁷. Liaison officers shall only be deployed to third countries in which border management practices respect minimum human rights standards. 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.
3. The tasks of the 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.
4. 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. The Agency may also invite representatives of third countries, other European Union agencies and bodies or international organisations to participate in its activities referred to in Articles 3, 4 and 5. These representatives shall receive the appropriate training from the Agency prior to their participation.
5. When concluding bilateral agreements with third countries as referred to in Article 2 (2) Member States shall, where appropriate, 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.
6. 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.
7. The activities referred to in paragraphs 2 and 6 shall be subject to receiving a prior favourable opinion of the Commission."

(17) The following Article 15a is inserted:

"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

¹⁷ OJ L 64, 2.3.2004, p. 1.

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."

(18) In Article 17, paragraph 3 is replaced by the following:

"3. 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(2) only national experts seconded by a Member State to the Agency can be designated to be attached to the Frontex Joint Support Teams. The Agency shall designate those national experts that shall be attached to the Frontex Joint Support Teams in accordance with that Article."

(19) In Article 17 the following paragraphs 4 and 5 are added:

"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."

(20) Article 20 is amended as follows:

(a) Paragraph 2 is amended as follows:

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

"(h) establish the organisational structure of the Agency and adopt the Agency's staff policy, in particular the multi-annual staff policy plan and submit the latter, in accordance with the relevant provisions of the framework Financial Regulation for the bodies referred to in Article 185 of the general Financial Regulation¹⁸, to the Commission and the budgetary authority after receiving a favourable opinion of the Commission;"

(ii) The following point (i) is inserted:

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

¹⁸ Commission Regulation (EC, Euratom) No 2343/2002 (OJ L 357, 31.12.2002, p. 72), amended by Commission Regulation (EC, Euratom) No 652/2008 (OJ L 181, 10.1.2008, p. 23).

(b) Paragraph 4 is replaced by the following:

"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 activities related to research as defined in Article 6."

(21) Article 21 is amended as follows:

(a) In Paragraph 1 the last sentence is replaced by the following:

"This term of office shall be extendable."

(b) Paragraph 3 is replaced by the following:

"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 have been developed that 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."

(22) In Article 25 (3) the following point (g) shall be added:

"(g) to implement the operational plan referred to in Articles 3a and 8g. "

(23) In Article 33, the following paragraphs 2a and 2b are inserted:

"2a. The evaluation shall analyse the needs for the Agency to employ independent border guards acting under the instructions of the Agency, including a detailed description of the legal framework that would need to be set in place for that purpose.

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."

Article 2
Entry into force

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

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

Done at Brussels,

For the European Parliament
The President

For the Council
The President