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of. Working Party on Frontiers/Mixed Committee
(EU-Iceland/Liechtenstein/Norway/Switzerland)

dated: 11 February 2011

Subject: **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)**

At its meeting on 11 February 2011, the Working Party on Frontiers/Mixed Committee examined the draft Regulation amending Council Regulation (EC) No 2007/2004 establishing FRONTEX, as set out in doc. 5099/11 FRONT 1 CODEC 13 COMIX 4.

In particular the Working Party examined the personal data related issues, on the basis of doc. 5683/11 FRONT 10 CODEC 135 COMIX 42, and the other outstanding questions from Article 4 onwards, on the basis of doc. 5099/11 FRONT 1 CODEC 13 COMIX 4 and doc. 5859/11 FRONT 9 CODEC 134 COMIX 56.

The text of the examined Articles, with remarks of delegations in footnotes, is set out in the Annex. Proposed changes to the text are underlined or marked for deletion, where applicable. The changes that have already been agreed are set in bold.

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)

(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 carry out studies on the preparedness ~~regularly evaluate the capacity~~ of the Member States to face upcoming challenges, including present and future threats and pressures at certain sectors of the external borders of the European Union. These studies are without prejudice to the Schengen Evaluation Mechanism.¹

~~Therefore the Agency shall evaluate the national structures, the equipment and the resources of the Member States regarding border control.~~ The results of these studies ~~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."

¹ **SI** has a reservation on Article 4. **EL** suggested rewording the text to provide that the studies on Member States' preparedness "are not related to the Sch-eval mechanism" and add "with the acceptance of the Member States". **CZ** expressed the view that it would be preferable, rather than a declaration as previously suggested, to add a recital that would clarify the relation between the studies referred to in the second paragraph of Article 4 and the Sch-eval mechanism. It will send a written proposal. **The Presidency** will submit a proposal for a recital according to the **CZ** suggestion.

(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 proactively 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.¹ 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, 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 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.

¹ **FR**, which had suggested adding that the Agency might contribute to the acquisition of equipment by the Member States, will send an explanatory document and keeps a reservation on the current text. **EL** reiterated its suggestion that the Agency should cover the operational costs of the equipment acquired, and also in the case of operations carried out by the Member States without FRONTEX assistance. **BE** underlined that these issues should be considered in the context of the existing general rules on reimbursement and no specific additional rules in this regard are needed. **Cion** stressed that the existing EU financial framework applies and, if necessary, implementing rules by Frontex may be revised by the Management Board. Therefore introducing different provisions from the general EU framework in the Regulation would create problems.

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. **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 ~~within 30~~ for deployment at the request of the Agency, unless they are faced with an **exceptional unforeseen** situation substantially affecting the discharge of national tasks. **Such request 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 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.¹

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

¹ **EL, IT, RO, CY** and **LV** are not in favour of the current text of Article 7(5) and would prefer all technical equipment, also exceeding the minimum number, to be fully financed by the Agency. **EL** and **IT** stressed that full financing of such equipment would be an incentive for Member States. **MT** reiterated its suggestion that in case the Agency assesses that a Member State is not in a position to provide technical equipment within the minimum number, it should fully finance any additional equipment to be provided by that Member State. **Cion** indicated that there could be a certain flexibility, stressing however that technical equipment should be co-financed and that the Agency's financial means could not be sufficient to cover all types of equipment. An incentive should be kept for the MS participating in the pool of equipment.

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.

If the minimum number of equipment proves to be insufficient to carry out the operational plan agreed for joint operations, pilot projects, Rapid Border Intervention Teams or return operations, it shall be revised by the Agency¹.

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 (h1), (h2), ~~and~~ (i) **and (j)** shall be added:
- (h1) 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 ~~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 information on the application of the relevant jurisdiction and legislation in~~ the geographical area where the joint operation takes place.
- (j) modalities of cooperation with third countries, if relevant."**

¹ **FR** reiterated its suggestion to add the wording "on the basis of justified needs and of an agreement between the Agency and the Member States". **Cion** clarified that the decision would be taken by the Management Board on a proposal from the Agency. **FR** will further reflect on the issue.

(11) In Article 8h paragraph 1, **first subparagraph**, 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/EC¹ the Agency shall provide the necessary assistance, and upon request of the participating Member States ensure the coordination ~~or the organization² for organising~~ of 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 air³~~ 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 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.

¹ OJ L 348, 24.12. 2008.

² **FR** and **MT** reiterated their suggestion to use the wording "chartering" in par.1. **The Presidency** pointed out that the coordination and organization activities also cover other possibilities and concluded that the current text will be maintained.

³ **ES** cannot agree on the deletion of the specific reference to "air" and "flights" regarding return operations. **PT** maintains its scrutiny reservation on the proposed deletion.

3. The Code of Conduct will in particular pay attention to the obligation on Member States set out in Article 8(6) of Directive 2008/115/EC to provide for an effective forced-return monitoring system. ¹ The monitoring of joint return operations should be carried out ~~independently~~² in conformity with aforementioned Directive 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~~³, if necessary, inform the Agency of their ~~situation with regard to return and indicate to what extent~~ needs for the assistance or coordination ~~by 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."

¹ **DE** and **ES**, supported by **IT** and **FR**, reiterated their suggestion to keep only the first sentence of Article 9(3) and delete the rest. **EL** believes that a simple reference to the return directive would be sufficient and asked the CLS to clarify the relation between the provisions under discussions and such directive. The **CLS** expressed the view that the current text of par.3 which provides for specific rules regarding joint operations coordinated by FRONTEX is not in conflict with the return directive which contains a general provision. **NL**, **NO**, **AT** and **FI** would prefer to keep the current text. **Cion** also prefers to maintain the original text of its proposal.

² **MT** reiterated its suggestion to delete the term "independently". **EL** also has some concerns regarding this term. **RO** is reflecting on the issue. **NL**, **AT**, **FI** and **BE** do not support the deletion. **ES** could accept to keep the term "independent", if its meaning would be clarified. As also suggested by **BE**, **the Presidency** drew the attention on the possible difficulties with the European Parliament regarding the deletion of the term "independent".

³ **IT** reiterated the view that "once a month" is redundant. As there were no objections to this suggestion, **the Presidency** concluded that "once a month" is deleted.

(14) Article 11 is replaced by the following:

"Article 11

Information exchange systems

~~1. 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. Without prejudice to the competence of Member States to process personal data collected in the context of joint operations and pilot projects, the exchange of information to be covered by this system shall not include the exchange of such personal data.~~

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

"Article 11a

Data protection

Regulation (EC) No 45/2001 shall apply to the Agency.

~~The Management Board shall establish measures for the application of that Regulation (EC) No 45/2001 by the Agency, including those concerning the Data Protection Officer of the Agency.~~

Article 11b

moved to Article 11d

Article 11

Information exchange systems

1. The Agency may take all necessary measures to facilitate the exchange of information relevant for its tasks, with the Commission, 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 11 a), 11 b) and 11 c).

(15) The following Articles 11a) to 11c) are inserted:

*"Article 11a
Data protection*

Regulation (EC) No 45/2001¹ shall apply to 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 11 c), 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 11 a):

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.

¹ OJ L 8, 12.1.2001, p. 1.

Article 11c)

Processing of personal data collected during joint operations, pilot projects and the deployment of rapid border intervention teams

In accordance with the measures referred to in Articles 11 a):

1. Without prejudice to the competence of Member States to collect personal data in the context of joint operations, pilot projects and the deployment of rapid border intervention teams, 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.¹

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.²

¹ **DE** has a reservation on Article 11c. **BG** needs further reflection on the processing of personal data by FRONTEX. **Cion** has a flexible approach, though stressing that such processing should respect the principles of necessity and proportionality.

² Some delegations (**RO, EL, LT, PT** and **CH**) support the current text which limits the processing by FRONTEX to personal data of suspected criminals. **SE** and **FI** suggested considering if processing by FRONTEX could also include other types of personal data, such as data of victims or witnesses. **NL** and **AT** are not in favour of processing by FRONTEX of personal data for other purposes than the ones indicated in the current text.

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

- a) transmission to Europol or other European Agencies, subject to Article 13 of this Regulation.¹
- b) use for the preparation of risk analyses referred to in Article 4.²

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.

6. Onward transmission or other communication of such personal data processed by the Agency to third countries or other third parties is prohibited.

¹ Several delegations (**FI, AT, LU, EL, SI**) supported in general the possibility for FRONTEX to transmit personal data to Europol and other Agencies. Some delegations can agree with this possibility, but limiting the other Agencies (**LT**) or pointing out that it is difficult to identify the other Agencies that could be involved (**NL**) or that the only other Agency concerned could be Eurojust (**NO, RO, EL**). **FR**, supported by **LU**, stressed the need to avoid that information gets lost. **FR** supports for the time being only transmission to Europol, but in order not to prevent in the future transmission to other Agencies, suggested adding a reference to the law enforcement Agencies. Other delegations support only the transmission to Europol, but not to other Agencies (**EE, SE, ES, PT**). **BE** is not opposed to the transmission to Europol, if this could solve problems. **PL** would not oppose this possibility, though considering preferable that transmission of personal data would remain a task for Member States. **MT** could accept only transmission to Europol of anonymous information. **CH** could accept the transmission only for the purpose of investigations. **BG** has some doubts regarding FRONTEX acting as a "mediator" for the transmission of personal data. **EE**, supported by **NO**, expressed the view that it should also be provided that FRONTEX could transmit personal data to Member States.

² Some delegations could agree with the possibility for FRONTEX to process personal data for the purposes of risk analysis in certain cases (**RO**) or provided that such processing should be strictly necessary (**FI, EL**), under strict conditions (**NL**) or for no more than three months as foreseen in the current text (**SI**). **SE**, supported by **NO**, can agree with such processing, if necessary and proportionate, in a preparatory phase, provided that data are subsequently depersonalized. **ES, EL, PT** could agree only if the data are depersonalized. **FR, LT, BE, BG, PL, MT** and **CH** are not in favour of the processing for risk analysis purposes. **DE**, pending its reservation, will reflect on the practical and legal implications of such processing.

Article 11d (previous 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, Euratom¹. 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 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.

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 agreements regarding the exchange of personal data and subject to the prior approval of the European Data Protection Supervisor.

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.²
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.³

¹ OJ L 317, 3.12.2001, p. 1.

² IT maintains its reservation on the current text that considers too broad and suggested that the Agency should also support Member States in concrete terms regarding the cooperation with third countries.

³ IT reiterated the view that a reference to external relations policy should be kept in par. 2 and keeps a reservation on the current text of this paragraph.

3.2.—The Agency may deploy its liaison officers, which should enjoy the highest possible protection to carry out their duties, in third countries ~~where Member States are not sufficiently represented~~. They shall form part of the local or regional cooperation networks of Member States' **immigration** liaison officers set up pursuant to Council Regulation No 377/2004¹. Liaison officers shall only be deployed to third countries in which border management practices respect minimum human rights standards.² 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.

4.3.—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. 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.~~

6. 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 5.³ These representatives shall receive the appropriate training from the Agency prior to their participation.

¹ OJ L 64, 2.3.2004, p. 1.

² **FR** reiterated its suggestion that the third countries where to deploy Frontex ILOs should be the most important in terms of risk.

³ **EL** reiterated its suggestion that the host Member State should be involved regarding the invitation of other bodies. **ES** reiterated the view that the reference to international organizations would be better placed in Article 13 and that it could accept the participation of international organizations only in training activities. **MT** reiterated the view that the current wording does not provide enough guarantees. **FR** suggested, as a compromise, that the decision to invite third countries should be approved by the Management Board. **EL** pointed out that the approval of the Management Board would not solve the problem as the decision regarding the invitation involves the sovereign rights of the Member States. **Cion** stressed that the current text does not involve the possibility to deploy experts in the Member States but to invite them to assist in services provided by the Agency to the Member States. It suggested that the issues raised by delegations might be addressed in the operational plan.

- ~~7. 5.—When concluding bilateral agreements with third countries as referred to in Article 2 (2) Member States shall may, 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.~~
- ~~8. The activities referred to in paragraphs 2 and 3 6 shall be subject to receiving a prior favourable opinion of the Commission".⁴~~

(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 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

¹ **PT, DE, AT, NL, IT** and **SE** reiterated their suggestion to delete par. 8. **Cion** preferred keeping par. 8. The Presidency concluded that par. 8 will be deleted.

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 **Council Regulation (EC, Euratom) No 1605/2002 the general Financial Regulation**¹ ~~the multi-annual staff policy plan shall be submitted~~ 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. "

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

¹ 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).

(23) In Article 33, the following paragraphs 2a and 2b are inserted:¹

~~"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.~~

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."

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

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¹ **RO** can agree on the current text of Article 33.2a). **SI** maintains its reservation on the current text of Article 33.2a), but can accept the deletion of the last part starting from "including the feasibility...".