

**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**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the Commission,

After consulting the European Economic and Social Committee,

Acting in accordance with the procedure laid down in Article 251 of the Treaty ⁽¹⁾,

Whereas:

- (1) On 26 October 2004, the Council adopted 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 ⁽²⁾ (the Agency).
- (2) A Member State facing circumstances requiring increased technical and operational assistance at its external borders may, without prejudice to Article 64(2) of the Treaty and in accordance with Articles 7 and 8 of Regulation (EC) No 2007/2004, ask the Agency for assistance in the form of coordination, where other Member States are involved.
- (3) Effective management of the external borders through checks and surveillance helps to combat illegal immigration and trafficking in human beings and to prevent any threat to the internal security, public policy, public health and international relations of the Member States. Border control is in the interests 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.
- (4) Responsibility for the control of the external borders lies with the Member States. Bearing in mind the critical situations which Member States from time to time have to deal with at their external borders, in particular the arrival at points of the external borders of large numbers of third-country nationals trying to enter the territory of the Member States illegally, it may be necessary to assist Member States by providing appropriate and sufficient resources, in particular personnel.

(5) The current possibilities for providing efficient practical assistance with regard to checking persons at the external borders and the surveillance of the external borders at European level are not considered sufficient, in particular where Member States are faced with the arrival of large numbers of third-country nationals trying to enter the territory of the Member States illegally.

(6) A Member State should accordingly have the possibility of requesting the deployment, within the framework of the Agency, of Rapid Border Intervention Teams comprising specially trained experts from other Member States on its territory to assist its national border guards on a temporary basis. The deployment of the Rapid Border Intervention Teams will contribute to increasing solidarity and mutual assistance between Member States.

(7) The deployment of Rapid Border Intervention Teams to provide support for a limited period of time should take place in exceptional and urgent situations. Situations of this kind would arise where a Member State was faced with a mass influx of third-country nationals attempting to enter its territory illegally which required an immediate response and where the deployment of a Rapid Border Intervention Team would contribute to providing an effective response. Rapid Border Intervention Teams are not intended to provide long-term assistance.

(8) Rapid Border Intervention Teams will depend on the planned duties, availability and frequency of deployment. To ensure the effective operation of the Rapid Border Intervention Teams, Member States should make available an appropriate number of border guards (the Rapid Pool) reflecting in particular the specialisation and size of their own border guard organisations. The Member States should therefore create national pools of experts to help increase the effectiveness of this Regulation. The different sizes of the Member States and the technical specialisation of their border guard organisations should be taken into consideration by the Agency.

(9) Best practices from many Member States show that knowing the profiles (skills and qualifications) of available border guards before deployment significantly contributes to the efficient planning and conduct of operations. The Agency should therefore determine the profiles and overall number of border guards to be provided for the Rapid Border Intervention Teams.

⁽¹⁾ Opinion of the European Parliament of 26 April 2007 (not yet published in the Official Journal) and Council Decision of 12 June 2007.

⁽²⁾ OJ L 349, 25.11.2004, p. 1.

- (10) A mechanism for the creation of Rapid Border Intervention Teams which offers both the Agency and the Member States sufficient flexibility and ensures that operations are carried out with a high level of efficiency and effectiveness should be established.
- (11) The Agency should, *inter alia*, coordinate the composition, training and deployment of the Rapid Border Intervention Teams. It is therefore necessary to introduce new provisions in Regulation (EC) No 2007/2004 concerning the role of the Agency with respect to those teams.
- (12) When a Member State is faced with a mass influx of third-country nationals attempting to enter its territory illegally, or another exceptional situation substantially affecting the discharge of national tasks, it may refrain from making its national border guards available for deployment.
- (13) In order to work effectively together with national border guards, the members of the teams should be able to carry out tasks related to the checks of persons at and the surveillance of the external borders while deployed on the territory of the Member State requesting their assistance.
- (14) Similarly, the efficiency of joint operations coordinated by the Agency should be further improved by enabling, on a temporary basis, guest officers from other Member States to carry out tasks related to the checks of persons at and the surveillance of the external borders.
- (15) It is therefore also necessary to introduce new provisions in Regulation (EC) No 2007/2004 concerning the tasks and powers of guest officers deployed on the territory of a Member State at its request within the framework of the Agency.
- (16) This Regulation contributes to the correct application of Regulation (EC) No 562/2006 of the European Parliament and of the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code) ⁽¹⁾. To this end, members of the teams and guest officers, while carrying out border checks and surveillance, should not discriminate against persons on grounds of sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation. Any measures taken in the performance of their tasks and in the exercise of their powers should be proportionate to the objectives pursued by such measures.
- (17) This Regulation respects fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union. It should be applied in accordance with the Member States' obligations as regards international protection and non-refoulement.
- (18) This Regulation should be applied with full respect for obligations arising under the international law of the sea, in particular as regards search and rescue.
- (19) 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 data ⁽²⁾ applies to the processing of personal data by the Member States in application of this Regulation.
- (20) As regards Iceland and Norway, this Regulation constitutes a development of 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 latter's association with the implementation, application and development of the Schengen *acquis* ⁽³⁾ which fall within the area referred to in Article 1, point A, of Council Decision 1999/437/EC ⁽⁴⁾ on certain arrangements for the application of that Agreement.
- (21) As regards Switzerland, this Regulation constitutes a development of provisions of the Schengen *acquis* within the meaning of the Agreement signed between the European Union, the European Community and the Swiss Confederation concerning the association of the Swiss Confederation with the implementation, application and development of the Schengen *acquis* which fall within the area referred to in Article 1, point A, of Decision 1999/437/EC read in conjunction with Article 4(1) of Council Decisions 2004/849/EC ⁽⁵⁾ and 2004/860/EC ⁽⁶⁾.

⁽²⁾ OJ L 281, 23.11.1995, p. 31. Directive as amended by Regulation (EC) No 1882/2003 (OJ L 284, 31.10.2003, p. 1).

⁽³⁾ OJ L 176, 10.7.1999, p. 36.

⁽⁴⁾ OJ L 176, 10.7.1999, p. 31.

⁽⁵⁾ Council Decision 2004/849/EC of 25 October 2004 on the signing, on behalf of the European Union, and on the provisional application of certain provisions of the Agreement between the European Union, the European Community and the Swiss Confederation concerning the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis* (OJ L 368, 15.12.2004, p. 26).

⁽⁶⁾ Council Decision 2004/860/EC of 25 October 2004 on the signing, on behalf of the European Union, and on the provisional application of certain provisions of the Agreement between the European Union, the European Community and the Swiss Confederation, concerning the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis* (OJ L 370, 17.12.2004, p. 78).

⁽¹⁾ OJ L 105, 13.4.2006, p. 1.

- (22) In accordance with Articles 1 and 2 of the Protocol on the position of Denmark annexed to the Treaty on European Union and to the Treaty establishing the European Community, Denmark does not take part in the adoption of this Regulation and is not bound by it or subject to its application. Given that this Regulation builds on the Schengen *acquis* under the provisions of Title IV of Part Three of the Treaty establishing the European Community, Denmark should, in accordance with Article 5 of that Protocol, decide within a period of six months after the date of adoption of this Regulation whether it will transpose it in its national law or not.
- (23) This Regulation constitutes a development of provisions of the Schengen *acquis* in which the United Kingdom does not take part, in accordance with Council Decision 2000/365/EC of 29 May 2000 concerning the request of the United Kingdom of Great Britain and Northern Ireland to take part in some of the provisions of the Schengen *acquis* ⁽¹⁾. The United Kingdom is therefore not taking part in its adoption and is not bound by it or subject to its application.
- (24) This Regulation constitutes a development of provisions of the Schengen *acquis* in which Ireland does not take part, in accordance with Council Decision 2002/192/EC of 28 February 2002 concerning Ireland's request to take part in some of the provisions of the Schengen *acquis* ⁽²⁾. Ireland is therefore not taking part in its adoption and is not bound by it or subject to its application.
- (25) In this Regulation, the provisions of Article 6(8) and (9) constitute, to the extent that they refer to access being given to the Schengen Information System, provisions building on the Schengen *acquis* or otherwise related to it within the meaning of Article 3(2) of the 2003 and Article 4(2) of the 2005 Acts of Accession,

HAVE ADOPTED THIS REGULATION:

Article 1

Subject matter

1. This Regulation establishes a mechanism for the purposes of providing rapid operational assistance for a limited period to a requesting Member State facing a situation of urgent and exceptional pressure, especially the arrival at points of the external borders of large numbers of third-country nationals trying to enter the territory of the Member State illegally, in the form of Rapid Border Intervention Teams (hereinafter referred to as teams). This Regulation also defines the tasks to be performed and powers to be exercised by members of the teams during operations in a Member State other than their own.

⁽¹⁾ OJ L 131, 1.6.2000, p. 43.

⁽²⁾ OJ L 64, 7.3.2002, p. 20.

2. This Regulation amends Regulation (EC) No 2007/2004 as a result of the establishment of the mechanism referred to in paragraph 1 and with a view to defining the tasks to be performed and powers to be exercised by border guards of the Member States participating in joint operations and pilot projects in another Member State.

3. Necessary technical assistance shall be provided to a requesting Member State in accordance with Articles 7 and 8 of Regulation (EC) No 2007/2004.

Article 2

Scope

This Regulation shall apply without prejudice to the rights of refugees and persons requesting international protection, in particular as regards non-refoulement.

CHAPTER I

RAPID BORDER INTERVENTION TEAMS

Article 3

Definitions

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

- 'the Agency' means the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union;
- 'members of the teams' means border guards of Member States serving with the Rapid Border Intervention Teams other than those of the host Member State;
- 'requesting Member State' means a Member State whose competent authorities request the Agency to deploy Rapid Border Intervention Teams on its territory;
- 'host Member State' means a Member State on the territory of which a deployment of a Rapid Border Intervention Team takes place;
- 'home Member State' means the Member State of which a member of the team is a border guard.

Article 4

Composition and deployment of Rapid Border Intervention Teams

1. The composition of teams shall be determined by the Agency in accordance with Article 8b of Regulation (EC) No 2007/2004 as amended by this Regulation. Their deployment shall be governed by Article 8d of that Regulation.

2. On a proposal by the Executive Director of the Agency, the Agency's Management Board shall decide by a three-quarters' majority on the profiles and the overall number of border guards to be made available for the teams (the Rapid Pool). The same procedure shall apply with regard to any subsequent changes in the profiles and the overall number of border guards of the Rapid Pool. Member States shall contribute to the Rapid Pool via a national expert pool on the basis of the various defined profiles by nominating border guards corresponding to the required profiles.

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. The autonomy of the home Member State in relation to the selection of staff and the duration of their deployment shall remain unaffected.

4. The costs relating to the activities referred to in paragraph 1 shall be met by the Agency in accordance with Article 8h of Regulation (EC) No 2007/2004.

Article 5

Instructions to the Rapid Border Intervention Teams

1. During deployment of the teams, instructions to the teams shall be issued by the host Member State in accordance with the operational plan referred to in Article 8e of Regulation (EC) No 2007/2004.

2. The Agency, via its coordinating officer as referred to in Article 8g of Regulation (EC) No 2007/2004, 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 of Regulation (EC) No 2007/2004, the host Member State shall give the coordinating officer all necessary assistance, including full access to the teams at all times throughout the deployment.

Article 6

Tasks and powers of the members of the teams

1. Members of the teams shall have the capacity to perform all tasks and exercise all powers for border checks or border surveillance in accordance with Regulation (EC) No 562/2006 and that are necessary for the realisation of the objectives of that Regulation. The details for each deployment shall be specified in the operational plan of that deployment in accordance with Article 8e of Regulation (EC) No 2007/2004.

2. Members of the teams shall, in the performance of their tasks and in the exercise of their powers, fully respect 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.

3. Members of the teams may only perform tasks and exercise powers under instructions from and, as a general rule, in the presence of border guards of the host Member State.

4. Members of the teams shall wear their own uniform while performing their tasks and exercising their powers. They shall wear a blue armband with the insignia of the European Union and the Agency on their uniforms, identifying them as participating in a deployment of the teams. For the purposes of identification vis-à-vis the national authorities of the host Member State and its citizens, members of the teams shall at all times carry an accreditation document, as provided for in Article 8, which they shall present on request.

5. While performing their tasks and exercising their powers, members of the teams may carry service weapons, ammunition and equipment as authorised according to the home Member State's national law. However, the host Member State may prohibit the carrying of certain service weapons, ammunition and equipment, provided that its own legislation applies the same prohibition to its own border guards. The host Member State shall, in advance of the deployment of the teams, inform the Agency of the permissible service weapons, ammunition and equipment and of the conditions for their use. The Agency shall make this information available to all Member States participating in the deployment.

6. While performing their tasks and exercising their powers, members of the teams shall be authorised to use force, including service weapons, ammunition and equipment, with the consent of the home Member State and the host Member State, in the presence of border guards of the host Member State and in accordance with the national law of the host Member State.

7. By way of derogation from paragraph 6, service weapons, ammunition and equipment may be used in legitimate self-defence and in legitimate defence of members of the teams or of other persons, in accordance with the national law of the host Member State.

8. For the purpose of this Regulation, the host Member State may authorise the members of the teams to consult its national and European databases which are necessary for border checks and surveillance. The members of the teams shall consult only those data which are required for performing their tasks and exercising their powers. The host Member State shall, in advance of the deployment of the teams, inform the Agency of the national and European databases which may be consulted. The Agency shall make this information available to all Member States participating in the deployment.

9. The consultation as referred to in paragraph 8 shall be carried out in accordance with Community law and the national law of the host Member State in the area of data protection.

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

Article 7

Status, rights and obligations of members of the teams

1. Members of the teams shall remain national border guards of their home Member States and shall be paid by them.

2. Border guards who are made available to the Rapid Pool pursuant to Article 4 shall participate in advanced training relevant to their tasks and powers as well as in the regular exercises conducted by the Agency in accordance with Article 8c of Regulation (EC) No 2007/2004.

3. Border guards shall receive a daily subsistence allowance, including accommodation costs, for the duration of their participation in training and exercises organised by the Agency and of their periods of deployment in accordance with Article 8h of Regulation (EC) No 2007/2004.

Article 8

Accreditation document

1. The Agency shall, in cooperation with the host Member State, issue a document in the official language of the host Member State and another official language of the institutions of the European Union to members of the teams for the purpose of identifying them and as proof of the holder's rights to perform the tasks and exercise the powers as referred to in Article 6(1). The document shall include the following features of the member of the team:

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

2. The document shall be returned to the Agency at the end of the deployment of the team.

Article 9

Applicable law

1. While performing the tasks and exercising the powers as referred to in Article 6(1), the members of the teams shall comply with Community law and the national law of the host Member State.

2. While performing the tasks and exercising the powers as referred to in Article 6(1), the members of the teams shall remain subject to the disciplinary measures of their home Member State.

3. Specific rules concerning the carrying and use of service weapons, ammunition and equipment, as well as the use of force are set out in Article 6(5), (6) and (7).

4. Specific rules concerning civil and criminal liability are set out in Articles 10 and 11 respectively.

Article 10

Civil liability

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

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

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

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

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

Article 11

Criminal liability

During the deployment of the teams, members of the teams shall be treated in the same way as officials of the host Member State with regard to any criminal offences that might be committed against them or by them.

CHAPTER II

AMENDMENTS TO REGULATION (EC) No 2007/2004

Article 12

Amendments

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

1. Article 1(4) shall be deleted;
2. the following Article shall be inserted:

'Article 1a

Definitions

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

1. "external borders of the Member States" means the land and sea borders of the Member States and their airports and seaports, to which the provisions of Community law on the crossing of external borders by persons apply;
 2. "host Member State" means a Member State on the territory of which a deployment of a Rapid Border Intervention Team or a joint operation or a pilot project takes place;
 3. "home Member State" means the Member State of which a member of the team or the guest officer is a border guard;
 4. "members of the teams" means border guards of Member States serving with the Rapid Border Intervention Team other than those of the host Member State;
 5. "requesting Member State" means a Member State whose competent authorities request the Agency to deploy the Rapid Border Intervention Teams on its territory;
 6. "guest officers" means the officers of border guard services of Member States other than the host Member State participating in joint operations and pilot projects.;
3. in Article 2(1), the following point shall be added:

(g) deploy Rapid Border Intervention Teams to Member States in accordance with Regulation (EC) No 863/2007 of the European Parliament and of the Council of 11 July 2007 establishing a mechanism for the creation of Rapid Border Intervention Teams and amending Council Regulation (EC) No 2007/2004 as regards that mechanism and regulating the tasks and powers of guest officers (*).

(*) OJ L 199, 31.7.2007, p. 30.'

4. Article 8(3) shall be replaced by the following:

'3. The Agency may acquire technical equipment for checks and surveillance of external borders to be used by its experts and within the framework of the Rapid Border Intervention Teams for the duration of their deployment.;

5. the following Articles shall be inserted:

'Article 8a

Rapid Border Intervention Teams

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

Article 8b

Composition of teams

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

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

Article 8c

Training and exercises

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

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

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

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

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

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

5. If the Executive Director decides to deploy one or more teams, an operational plan shall immediately be drawn up by the Agency and the requesting Member State in accordance with Article 8e.

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

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

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

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

*Article 8e***Operational plan**

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

- (a) description of the situation, with *modus operandi* and objectives of the deployment, including the operational aim;
- (b) the foreseeable duration of deployment of the teams;
- (c) the geographical area of responsibility in the requesting Member State where the teams will be deployed;
- (d) description of tasks and special instructions for members of the teams, including on permissible consultation of databases and permissible service weapons, ammunition and equipment in the host Member State;
- (e) the composition of the teams;
- (f) the names and ranks of the host Member State's border guards responsible for cooperating with the teams, in particular those of the border guards who are in command of the teams during the period of deployment, and the place of the teams in the chain of command;
- (g) the technical equipment to be deployed together with the teams in accordance with Article 8.

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

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

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

*Article 8g***Coordinating Officer**

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

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

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

- (b) act as an interface between the Agency and the members of the teams, providing assistance, on behalf of the Agency, on all issues relating to the conditions for their deployment with the teams;
- (c) monitor the correct implementation of the operational plan;
- (d) report to the Agency on all aspects of the deployment of the teams.

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

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

Article 8h

Costs

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

- (a) travel costs from the home Member State to the host Member State and from the host Member State to the home Member State;
- (b) costs related to vaccinations;
- (c) costs related to special insurance needs;
- (d) costs related to health care;
- (e) daily subsistence allowances, including accommodation costs;
- (f) costs related to the Agency's technical equipment.

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

6. Article 10 shall be replaced by the following:

'Article 10

Tasks and powers of guest officers

1. Guest officers shall have the capacity to perform all tasks and exercise all powers for border checks or border surveillance in accordance with Regulation (EC) No 562/2006 of the European Parliament and of the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code) (*), and that are necessary for the realisation of the objectives of that Regulation.

2. While performing their tasks and exercising their powers guest officers shall comply with Community law and the national law of the host Member State.

3. Guest officers may only perform tasks and exercise powers under instructions from and, as a general rule, in the presence of border guards of the host Member State.

4. Guest officers shall wear their own uniform while performing their tasks and exercising their powers. They shall wear a blue armband with the insignia of the European Union and the Agency on their uniforms, identifying them as participating in a joint operation or pilot project. For the purposes of identification vis-à-vis the national authorities of the host Member State and its citizens, guest officers shall at all times carry an accreditation document, as provided for in Article 10a, which they shall present on request.

5. By way of derogation from paragraph 2, while performing their tasks and exercising their powers, guest officers may carry service weapons, ammunition and equipment as authorised according to the home Member State's national law. However, the host Member State may prohibit the carrying of certain service weapons, ammunition and equipment, provided that its own legislation applies the same prohibition to its own border guards. The host Member State shall, in advance of the deployment of the guest officers, inform the Agency of the permissible service weapons, ammunition and equipment and of the conditions for their use. The Agency shall make this information available to Member States.

6. By way of derogation from paragraph 2, while performing their tasks and exercising their powers, guest officers shall be authorised to use force, including service weapons, ammunition and equipment, with the consent of the home Member State and the host Member State, in the presence of border guards of the host Member State and in accordance with the national law of the host Member State.

7. By way of derogation from paragraph 6, service weapons, ammunition and equipment may be used in legitimate self-defence and in legitimate defence of guest officers or of other persons, in accordance with the national law of the host Member State.

8. For the purpose of this Regulation, the host Member State may authorise guest officers to consult its national and European databases which are necessary for border checks and surveillance. The guest officers shall consult only those data which are required for performing their tasks and exercising their powers. The host Member State shall, in advance of the deployment of the guest officers, inform the Agency of the national and European databases which may be consulted. The Agency shall make this information available to all Member States participating in the deployment.

9. The consultation as referred to in paragraph 8 shall be carried out in accordance with Community law and the national law of the host Member State in the area of data protection.

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

Article 10a

Accreditation document

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

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

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

Article 10b

Civil liability

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

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

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

This Regulation shall be binding in its entirety and directly applicable in the Member States, in accordance with the Treaty establishing the European Community.

Done at Strasbourg, 11 July 2007.

For the European Parliament
The President
H.-G. PÖTTERING

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

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

Article 10c

Criminal liability

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

(*) OJ L 105, 13.4.2006, p. 1.'

CHAPTER III

FINAL PROVISIONS

Article 13

Evaluation

The Commission shall evaluate the application of this Regulation one year after its entry into force and present a report to the European Parliament and the Council accompanied, if necessary, by proposals to amend this Regulation.

Article 14

Entry into force

This Regulation shall enter into force on the 20th day following its publication in the *Official Journal of the European Union*.

For the Council
The President
M. LOBO ANTUNES

ANNEX

Statement by the European Parliament, the Council and the Commission

The European Parliament, the Council and the Commission stress that in a situation of urgent and exceptional pressure at the external borders requiring the intervention of a Rapid Border Intervention Team, and possible insufficiency of financial means in the budget of the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (FRONTEX) to do so, all possibilities to ensure funding should be explored. The Commission will verify with extreme urgency whether funds could possibly be redeployed. In the event of a decision of the budgetary authority becoming necessary, the Commission will initiate a procedure in accordance with the provisions of the Financial Regulation, namely Articles 23 and 24, in order to secure a timely decision of the two arms of the budgetary authority on the means of providing for additional funding for FRONTEX to deploy a Rapid Border Intervention Team. The budgetary authority commits itself to act as quickly as possible, taking into account the urgency.
