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from: Presidency

to: Working Party on Frontiers/Mixed Committee
(EU-Iceland/Liechtenstein/Norway/Switzerland)

No. Cion prop.: 6898/10 FRONT 22 CODEC 222 COMIX 151

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)
-Outstanding issues**

I - INTRODUCTION

On 24 February 2010 the Commission submitted a 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), as set out in doc. 6898/10 FRONT 22 CODEC 222 COMIX 151.

The Working Party on Frontiers/Mixed Committee discussed the proposal at several meetings and has completed its third reading. Negotiations with the European Parliament on the proposal have not yet started.

A number of other outstanding issues need further examination. With a view to continuing the discussion at next meeting of the Working Party on Frontiers/Mixed Committee on 29 October 2010, the Presidency submits a summary of the outstanding issues as set out in point II below.

The issues that have been submitted to Scifa on 22 October 2010, namely risk analysis (Article 4), personal data (Article 11 and 11a) and evaluation (Article 33) are not included in this document and will subsequently be dealt with separately.

The revised text of the draft Regulation as proposed by the Presidency as a basis for discussions is set out in the Annex. The changes suggested by the Presidency are underlined. The changes which have already been agreed are in bold.

The European Commission has a general reservation on the latest text of the draft Regulation.

II - OUTSTANDING QUESTIONS

a- Joint operations and pilot projects at the external borders (Art.3)

Some delegations support the text of the second paragraph of Article 3 (1) of the original Commission proposal, which foresees that the Agency may initiate joint operations and pilot projects" in cooperation with Member States". Delegations' positions in this regard are still divergent, and other suggestions have also been made to reword the text, such as adding "in agreement" also "with Member States", or on the contrary deleting "the Member States concerned", etc... In order to meet the concerns expressed by certain delegations, the Presidency submits a compromise text which reads as follows: .."in cooperation with the Member States ~~concerned~~ and in agreement with the host Member States".

A number of delegations suggested involving the host Member State and/or the Member States in the decision to terminate a joint operation or a pilot project as referred to in Article 3(1) and/or providing that Member States may request to do so. Other delegations proposed providing also for the possibility for the Agency to suspend and/or for a Member State to withdraw from a joint operation or a pilot project. The Presidency has suggested a compromise text, providing that the Agency should inform the Member States concerned beforehand and that participating Member States may request the Agency to terminate a joint operation or pilot project. This compromise also leaves room for the situations where the Agency has no discretionary powers but must terminate an operation based on the Financial Regulation. Some delegations expressed support for the Presidency's text.

Regarding Article 3(4) concerning the reporting obligation of the results of joint operations and pilot projects, one delegation suggested adding that in case of reported incidents during these operations, the EU delegation should provide the Member State(s) concerned with the necessary support.

b- Operational plan (Art.3(a))

In order to meet the concerns expressed by some delegations regarding the need to ensure a role for the Members States participating in a joint operation or a pilot project in the preparation of the operational plan, the Presidency has revised the first paragraph of Article 3(a)(1), mentioning, "inter alia", that participating Member States shall be consulted. Based on other delegations' suggestions, the Presidency has also included detailed provisions on incident reporting in a separate point (h1). Several delegations expressed support for the Presidency's text.

Other issues requiring further consideration regarding Article 3(a) concern the proposal by one delegation that the operational plan should include provisions on the transport of arms, the suggestion by another delegation to delete the reference in point 1(h) of the current text to the "applicable jurisdiction", as well as the suggestions by one delegation to introduce in Article 3(a) a reference to the area of disembarkation and by another delegation to refer in the same point the modalities in managing illegal immigrants detected during the action.

c- Frontex Joint Support Teams (FJST) (Article 3b)

Following suggestions by some delegations, the Presidency has proposed revising Article 3(b), regarding the composition and deployment of Frontex Joint Support Teams (FJST), by adding in point 2) of the current text a reference to bilateral negotiations and agreements between the Agency and the Member States as a basis for the planning of Member States annual contributions' as regards border guards to specific operations. Several delegations expressed support for the Presidency's text. A majority of Member States support replacing the term "exceptional" with "unforeseen" regarding the situations where Member States would be exempted from the obligation to contribute to the FJST as well as extending the deadline of thirty days for the deployment to forty-five days as proposed by some delegations.

Some delegations suggested deleting point 3) of the current text as they do not see the added value of temporary secondment of border guards to the Agency. Taking into account the suggestions of other delegations, the Presidency has proposed a revised text by replacing "shall" with "may" that would not make the secondment compulsory for Member States. Several delegations expressed support for this proposal.

d- Technical equipment (Art.7)

Regarding the technical equipment that the Agency may acquire or lease, following suggestions of some delegations, the Presidency has proposed adding in the last paragraph of Article 7(1) that, 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. Based on suggestions made by delegations, the issue needs further reflection, in particular concerning possible references in the model agreement to the operational costs to be supported by Frontex and to responsibility of the Member State of registration as well as regarding whether the terms of use of the equipment would be defined by the Management Board or the Executive Director.

One delegation suggested that it should be also provided that the Agency might contribute to the acquisition of equipment by the Member States.

The revised text of the first paragraph of Article 7(3) proposed by the Presidency, which introduces a reference to bilateral negotiations and agreements between the Agency and the Member States as a basis for the planning of Member States annual contributions' to the pool, has been agreed by the Working Party. Following suggestions by some delegations to include a reference to the above agreements in the second paragraph of Article 7.3, the Presidency suggested revising the text accordingly.

In Article 7 (3), concerning the obligation to make technical equipment available, based on the concerns expressed by some delegations as regards the need to avoid affecting their ability to carry out national tasks, the Presidency has suggested revising the text by deleting "exceptional" and replacing it with "unforeseen" as regards the situations where Member States could be exempted from such obligation. Several delegations expressed support for the revised text.

In order to meet the concerns expressed by several delegations regarding the "thirty days" period for the deployment of the technical equipment, the Presidency has proposed revising the text by providing for the request to be made by the Agency forty-five days before the intended deployment. Several delegations are in favour of this suggestion.

Some delegations are not in favour of the current text of Article 7(5), making a distinction between the financing 100% by Frontex of the equipment within the minimum number that Member States would commit themselves to provide and the financing 60% of equipment exceeding the minimum number, and would prefer all technical equipment to be fully financed by the Agency. Some delegations also suggested providing for a role of the Management Board regarding possible changes in the minimum number of technical equipment.

e- Return cooperation (Article 9)

Regarding Article 9(3), one delegation suggested keeping only the first sentence and delete the rest, stressing that all the provisions regarding return, Code of Conduct and relevant monitoring are laid down in Directive 2008/115/EC.

One delegation suggested that Frontex tasks as regards joint return operations should include the chartering of aircrafts for the purpose of such operations.

Following suggestions by some delegations underlining that return operations are not limited to air operations, the Presidency has suggested revising the text of Article 9(2) by deleting the specific reference to "air" and "flights" One delegation cannot agree on this deletion.

One delegation cannot accept the term "independently" in the current text of the second sentence of Article 9(3) regarding the monitoring of return operations. The Presidency suggests revising the text accordingly. Some delegations stressed that it's important to make clear in the text that the choice of the monitoring bodies belongs to the Member States.

f- Cooperation with third countries (Article 14)

One delegation suggested rewording the text to provide that the Agency should also support cooperation between Member States and third countries taking into account existing bilateral agreements in the framework of the EU external policy.

Regarding the possibility for Frontex to deploy Immigrations Liaisons Officers(ILOs) in third countries, as foreseen in Article 14 (2), positions of delegations are divergent as regards the criteria to determine the third country where to deploy such officers. The current text requires the respect by these countries of human rights standards in border management practices. One delegation suggested deleting the reference to human rights. One delegation proposed replacing this sentence with " in the most important source or transit countries in terms of migratory risk". Some delegations suggest providing also that the relevant decision be taken by the Management Board. Given the fact that the list of priorities is to be adopted by the Management Board, the Presidency feels that no additional specification of the country of deployment is required in the article and therefore suggests keeping the original text of the Commission proposal.

Regarding the possibility for international organizations to participate in Frontex activities, as foreseen in the current text of Article 14 (6), one delegation suggests limiting this possibility to the activities referred to in Article 5 (training), excluding the activities referred to in Article 3 (operational activities) and 4 (Risk analysis).

Several delegations suggest deleting Article 14 (8) regarding the need for a prior favourable opinion from the Commission regarding the activities referred to in point 2) (working arrangements with third countries) and 3) (deployment of Frontex ILOs), stressing that the Commission is already represented with voting rights in the Management Board.

g- Headquarters Agreements (Article 15a)

One delegation has a reservation on the current text of Article 15a concerning the Headquarters agreements, suggesting that the last sentence regarding the specific conditions to be ensured by the Member State where the Agency has its seats, be reformulated with a less detailed and more flexible wording. This would bring the text in line with the same stipulation as in proposal regarding the Large Scale I.T. Agency. On the other hand, the Regulation establishing the European Asylum Support Office (EASO)¹ retained the same wording as the current Article 15a, the only difference being that the wording for EASO is even more compulsory.

III- CONCLUSIONS

In light of the above and with a view to next meeting of the Working Party on Frontiers/Mixed Committee on 29 October 2010, the Presidency invites delegations to reflect on the questions set out in point II above.

¹ OJ L 132 of 29.5.2010, p. 11

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)

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 Code, 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."

(2) Article 1a is amended as follows:

(a) point 2 is replaced by the following:

"2. "host Member State" means a Member State **in which** a deployment of a Rapid Border Intervention Team or a joint operation or a pilot project takes place **or from which it is launched**;"

(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;"

Point 7 has been deleted

(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 studies of the preparedness ~~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 or organization of 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/EC¹;

(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."

¹ 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 the Member States ~~concerned~~ and in agreement with the host Member States".

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

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

The Agency may also terminate, after informing the MS concerned, joint operations and pilot projects if the conditions to conduct these initiatives are no longer fulfilled. Participating Member States may request the Agency to terminate a joint operation or pilot project.

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, efficiency **and effectiveness** 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, in consultation with participating Member States, shall agree on the operational plan detailing the organisational aspects in due time before the envisaged beginning of the activity.

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

- (a) a description of the situation, with modus operandi and objectives of the deployment, including the operational aim;
- (b) the foreseeable duration of the joint operation or pilot projects;
- (c) the geographical area where the joint operation or pilot project will take place;
- (d) description of the tasks and special instructions for the guest officers, including on permissible consultation of databases and permissible service weapons, ammunition and equipment in the host Member State;
- (e) the composition of the teams of guest officers as well as the deployment of other relevant staff;
- (f) command and control provisions, including the names and ranks of the host Member State's border guards responsible for cooperating with the guest officers and the Agency, in particular those of the border guards who are in command during the period of deployment, and the place of the guest officers in the chain of command;
- (g) the technical equipment to be deployed during the joint operation or pilot project, including specific requirements such as conditions for use, requested crew, transport and other logistics, and financial provisions;
- (h1) 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.**
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.~~ 3- The contribution by Member States as regards their border guards to specific operations for the coming year shall be planned on the basis of annual bilateral negotiations and agreements between the Agency and Member States. In accordance with these agreements, Member States shall make the border guards available for deployment at the request of the Agency, unless they are faced with an unforeseen exceptional situation substantially affecting the discharge of national tasks. Such a request shall be made at least ~~thirty~~ forty five days before the intended deployment. The autonomy of the home Member State in relation to the selection of staff and the duration of their deployment shall remain unaffected.

~~3.~~ 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~~ may 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.

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 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.

~~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."

(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. 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.

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.

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.

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 Agency.

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."**

- (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 organization ~~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.

¹ OJ L 348, 24.12. 2008, p.

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 operations~~ and assure return in a humane manner and in full respect for fundamental rights, in particular the principles of human dignity, prohibition of torture and of inhuman or degrading treatment or punishment, right to liberty and security, the rights to the protection of personal data and non discrimination.
 3. The Code of Conduct will in particular pay attention to the obligation on Member States 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 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, 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."

(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 45/2001¹ 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

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

1. The Agency shall apply the Commission's rules on security as set out in the Annex to Commission Decision 2001/844/EC, ECSC, Euratom This shall cover, inter alia, provisions for the exchange, processing and storage of classified information.
2. The Agency shall apply the security principles relating to the processing of non-classified sensitive information as adopted and implemented by the European Commission. **The Management Board shall establish measures for the application of these security principles."**

¹ OJ L 8, 12.1.2001, p. 1.

(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.
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.
- 3.2. — 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. 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.

¹ OJ L 64, 2.3.2004, p. 1.

- ~~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. These representatives shall receive the appropriate training from the Agency prior to their participation.
- ~~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".

(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 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 Regulation⁴**, 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."

⁴ 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:

~~"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