



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels,
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Proposal for a

COUNCIL REGULATION

**establishing a European Agency for the Management of Operational Co-operation at the
External Borders**

EXPLANATORY MEMORANDUM

1. INTRODUCTION

In the field of the EU external borders, Community policy aims at an integrated management, thereby ensuring a high and uniform level of control of persons and surveillance at the external borders as a prerequisite for an area of freedom, security and justice. This objective of an integrated border management requires, as foreseen by Article 62 (2) (a) of the Treaty, the establishment of common rules as to the standards and procedures to be followed by Member States when controlling the external borders.

Given that the Member States are responsible for implementing, at an operational level, such common rules, Community policy would inevitably benefit from an increased co-ordination of their activities with regard to control and surveillance of the external borders.

In the Communication from the Commission to the Council and the European Parliament with the title “Towards integrated management of the external borders of the Member States of the European Union” from 7 May 2002¹, the Commission advocated the setting up of an “External borders practitioners’ common unit” tasked with managing operational co-operation at the external borders of the Member States.

The Plan for the management of the external borders of the Member States of the European Union (the Plan) agreed by the Council on 13 June 2002² endorsed the setting up of an external borders practitioners’ common unit (the Common Unit) in the framework of the Strategic Committee on Immigration, Frontiers and Asylum (SCIFA) as a means to establish an integrated management of the external borders.

In the Plan, the main tasks of the Common Unit, which started its work as SCIFA+ during the second half of 2002, is defined as acting as “head” of the common policy on management of external borders and as a “leader” co-ordinating and controlling operational projects.

In its report to the Council on the implementation of programmes, ad hoc centres, pilot projects and joint operations from 11 June 2003³, the Greek Presidency concluded that with regard to the pilot projects and joint operations, the absence of a monitoring mechanism and of a method for independent and thorough evaluation as well as for the processing and utilisation of results was particularly evident. The Presidency accordingly called for an examination of the necessity of a new institutional structure in order to enhance operational co-operation for the management of external borders.

In the Communication from the Commission to the European Parliament and the Council in view of the European Council of Thessaloniki on the development of a common policy on illegal immigration, smuggling and trafficking of human beings, external borders and the return of illegal residents⁴ from 3 June 2003, the Commission pointed out, that the Common Unit has shown structural limits with regard to the co-ordination of the operational co-operation at the external borders. The Commission therefore proposed that certain more strategic co-ordination tasks could remain with the Common Unit, whereas the more

¹ COM(2002) 233 final

² Doc. 10019/02 FRONT 58 COMIX 398

³ Doc. 10058/1/03 REV 1 FRONT 70 COMIX 354

⁴ COM(2003) 323 final

operational tasks could be entrusted to a new permanent Community structure able to exercise day-to-day management and co-ordination tasks and to respond in time to emergency situations.

In its Conclusions on effective management of the external borders of the EU Member States of 5 June 2003⁵, the Council called for the reinforcement of the Common Unit as a Council Working Party by experts seconded from the Member States to the Secretariat General of the Council.

The Thessaloniki European Council at its meeting on 19 and 20 June 2003, endorsed the above mentioned Council Conclusions of 5 June 2003, and invited the Commission to examine the necessity of creating new institutional mechanisms, including the possible creation of a Community operational structure, in order to enhance operational co-operation for the management of external borders.

In the conclusions of the European Council on 16 and 17 October 2003, the European Council welcomes the Commission's intention to present a proposal for an Agency for the management of external borders, in time for the Council to reach political agreement on its main elements by the end of the year.

This proposal for a Council Regulation establishing a European Agency for the Management of Operational Co-operation at the External Borders intends to meet that invitation of the European Council. It takes into account the experiences of co-operation between the Member States in the framework of the Common Unit from which the Agency shall take over the co-ordination of the operational co-operation.

In comparison with the Common Unit, the Agency has been given the additional task of co-ordinating and organising return operations of Member States and identifying best practices on the acquisition of travel documents and removal of third country nationals from the territories of the Member States. This is justified by the fact that in most Member States, the operational aspects of removal of third-country nationals fall under the competencies of the authorities responsible for controlling the external borders.

Conducting a credible immigration policy requires the possibility of returning third-country nationals residing illegally in the Member States. Based on the Communication from the Commission to the Council and the European Parliament on a Community return policy on illegal residents⁶, the Council has adopted an action plan on a Community return policy. The Commission is the driving force behind the implementation of the Community return policy, tabling a proposal for a Financial Instrument for Return Management and in early 2004 a proposal for a Council Directive on minimum standards for return procedures and mutual recognition of return decisions. Moreover, the Community has already entered into, or is in the process of negotiating, readmission agreements with a number of key third countries. Co-ordination by the Agency of the operational aspects of removal of third country nationals illegally residing in the Member States is thus an important task in the implementation of the Community return policy.

⁵ Doc. 10059/03 FRONT 71 COMIX 355

⁶ COM(2002) 564 final

2. OBJECTIVE

The main objective of Community policy in the field of the EU external borders is to create an integrated border management, which would ensure a high and uniform level of control and surveillance, an essential prerequisite for an area of freedom, security and justice. This objective requires, as foreseen by Article 62 (2) (a) of the Treaty, the establishment of common rules as to the standards and procedures to be followed by Member States when controlling the external borders.

With the integration of the Schengen acquis into the framework of the EU, such common rules on the control and surveillance of external borders already exist at Community level.

The common rules are applied at an operational level, by the competent national authorities of the Member States, who form part of the area without internal borders. Experience has, however, shown, that for optimal effectiveness, it is not sufficient that national authorities simply apply common rules, rather it is imperative that they apply those common rules in a harmonised way, thus ensuring at all external borders an equally high level of control and surveillance. For this reason, it has been increasingly recognised that Community policy on control and surveillance of the external borders would benefit from an increased co-operation between the competent national authorities.

The objective of this Regulation is, thus, to render more effective the implementation of Community policy on the management of the external borders by better co-ordinating the operational co-operation between the Member States via the creation of an Agency. The mission of this Agency would be to facilitate the application of existing and future Community measures relating to the management of the external borders by ensuring the co-ordination of Member States' actions in the implementation of those measures.

The Agency will therefore not be given a policy making role, nor would it make legislative proposals or exercise implementing powers within the meaning of Article 202 of the Treaty. It shall simply assist Member States in implementing Community legislation in the fields of control and surveillance of the external borders and removal of third-country nationals.

The Agency shall for this purpose develop and apply guidelines, *inter alia*, on training of border guards, but such guidelines will have the character of "soft law" only.

Community legislation on control and surveillance of the external borders and removal of third-country nationals shall, of course, continue to be created in accordance with the Community method.

The Commission will be represented on the Agency's Management Board and will provide any relevant advice and guidance, where Community legislation may be concerned.

The Agency's activities will be purely supplementary to those of the national services of Member States responsible for control and surveillance of the external borders and removal of third- country nationals.

The main tasks of the Agency are:

- Co-ordination of the operational co-operation between Member States in the field of control and surveillance of the external borders.

- Rendering assistance to Member States on training of their national border guards by providing training at European level for national instructors of border guards, as well as holding seminars and offering additional training to officers of national border guards.
- Carrying out of general and tailored risk assessments.
- Follow-up on developments in research relevant for the control and surveillance of the external borders.
- Rendering assistance to Member States confronted with circumstances requiring increased operational and technical assistance at the external borders.
- Co-ordination of operational co-operation between Member States on removal of third-country nationals illegally residing in Member States.

The tasks listed above are essentially similar to those of the Common Unit.

In executing its duties, the agency should co-operate with and take account of the work of other services involved in controls at the external border, in particular customs who have the main responsibility for the control of goods at the external borders. In this respect, and in the light of the recent Communication on the role of customs in the integrated management of external borders there should be periodic reviews of possible synergies between the work carried out by the agency and that carried out by customs and other services operating at the frontier.

On the basis of the experiences derived from this Agency, the Commission can propose to widen the scope of the Agency's tasks to encompass other matters related to the management of the external borders.

As can be seen from the list of tasks, the Agency will take over the activities that are today covered by various projects on the development of a common integrated risk assessment model (CIRAM), a common core curriculum for border guards' training and research in technologies relevant for control and surveillance of the external borders respectively.

This is done, because these activities are horizontal matters at the very core of the concept of integrated management of the external borders. They are not linked to a particular type of border, and they should accordingly be managed centrally in order to ensure the coherence and the uniformity of the concepts and criteria to be applied in all the Member States.

The creation of an Agency tasked with co-ordinating the operational aspects of control and surveillance of the external borders constitutes a concrete and important step towards achieving solidarity between Member States in the field of the management of the external borders.

The Agency will thus set up and keep centralised records of technical border control equipment, that Member States would be willing to put at the disposal of each other on a temporary basis following a needs and risks assessment carried out by the Agency

The Agency will itself acquire technical equipment for its experts, but this equipment can also be put at the disposal of Member States participating in joint operations and pilot projects. In this way the agency will make a really significant contribution with regard to burden sharing.

One of the main advantages of establishing a centralised structure such as an agency in the field of operational border management would be the improved ability to assist in tackling a possible critical situation at the external borders at European level.

As can be seen from the recent past, such crises are bound to occur from time to time, especially in the Mediterranean. Large numbers of illegal immigrants trying to cross the same external borders area of the European Union under conditions requiring special efforts from the Member State(s) responsible for guarding that particular external border, require co-ordination and co-operation not just at local or regional, but at European level.

In these cases the Agency could assist the affected Member States on co-ordination matters. The agency could also temporarily deploy its experts with equipment to support the competent national authorities.

3. IMPLEMENTATION

The Agency shall co-operate directly with Member States and co-ordinate all joint operations and pilot projects at the external borders.

The Agency shall establish its own specialised branches responsible for dealing with the specific aspects of control and surveillance of land, air, and maritime borders by transforming the existing, more informal, centres' structure into a Community structure.

The specialised branches are, as local offices of the Agency, an integrated part of structure of the Agency. They shall report to and take instructions from the Agency.

Member States may submit proposals for joint operations and pilot projects to the Agency for evaluation and approval. When deciding on the proposals, the Agency shall emphasise on their relevance, compatibility and added value. In addition, the Agency may decide itself to launch initiatives for joint operations and pilot projects with the Member States. The Agency operates through its specialised branches for the operational organisation of such joint operations and pilot projects.

It should be stressed that the staff of the Agency, including the national experts detached by Member States, as a starting point, does not have any law enforcing competencies in Member States and consequently does not carry out actual controls at the external borders.

As for the funding of operations, the Agency may decide to co-finance joint operations and pilot projects proposed and carried out by Member States. It shall evaluate the results of operations and projects and make a comparative analysis thereof with a view to enhancing the quality of future operations.

The horizontal matters (training for border guards, risk analysis and follow-up on research) will be carried out by the Agency alone.

Concerning the co-ordination and organisation of joint return operations, the Agency will provide Member States with the necessary technical support in organising joint return operations, *e.g.* by developing a network of contact points to that end, by keeping an up-to-date inventory of existing and available resources and facilities, or by preparing specific guidelines and recommendations on joint return operations.

As mentioned above, the Agency can assist Member States confronted with circumstances requiring increased technical and operational assistance at the external borders on co-ordination matters. It can also deploy its own experts and technical equipment in the Member State(s) concerned. However, the experts will have a purely consultative role and not participate actively in strictly law enforcing activities.

4. FUNDING

The Agency may co-finance joint operations and pilot projects at the external borders with grants from its budget in accordance with the Agency's Financial Regulation. The Agency, in its proposal for the annual working programme, will be able to identify some of these operations and projects, and invite Member States to participate in their implementation.

5. CHOICE OF COMMUNITY STRUCTURE

The choice of establishing an agency in the field of management of the operational co-operation at the external borders is justified by the clear need for creating an independent, specialised Community operational structure, as foreseen by the Thessaloniki European Council in order to improve the operational co-operation between Member States.

When settling for the option of establishing an agency, the Commission has emphasised the fact, that the Agency will be in a better position than even the Commission itself to accumulate the highly technical know-how on control and surveillance of the external borders that will be necessary, if the Agency shall give an added value to the operational co-operation in its field. Moreover, the establishment of an Agency is expected to lead to increased visibility for the management of external borders in the public and cost-savings with regard to the operational co-operation falling under its competence.

The present proposal for a Regulation establishing a European Agency for the Management of the operational co-operation at the External Borders has been drafted with account to the White Paper on European Governance⁷ from 25 July 2001, the Meta-Evaluation on the Community Agency System⁸ carried out by the Commission, the Communication from the Commission on the operating framework for the European Regulatory Agencies⁹, and the Commission Regulation of 23 December 2002 on the framework Financial Regulation for the bodies referred to in Article 185 of Council Regulation (EC, Euratom) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities¹⁰.

In this framework, specific attention should be paid, besides standard questions on the efficiency and effectiveness of the Agency, to issues such as coherence with Community policy, the actual contribution of the Agency to the delivery of such a policy, the added value provided by the Agency as an organisational form of implementation of Community policy, the longer-term impact of the Agency's activities on its final beneficiaries (*i. e.* the national competent authorities of Member States). A more formal analysis to that end will be undertaken in parallel with the legislative process.

⁷ COM(2001) 428 final

⁸ Final Report of the Commission of 15 September 2003

⁹ COM(2002) 718 final

¹⁰ Commission Regulation (EC, Euratom) No 2343/2002 of 23 December 2002

The Agency established by this Regulation is a regulatory one tasked with the mission of rendering assistance to Member States in implementing Community legislation in this field by co-ordinating operational aspects of co-operation at the external borders.

6. CHOICE OF THE LEGAL BASIS

Article 66 of the Treaty establishing the European Community is the legal basis of this Regulation whose immediate objective is to support the progressive establishment of an area of freedom, security and justice via the reinforcement of the administrative co-operation between the relevant departments of each Member State and the Commission concerning the implementation of the Schengen acquis on control and surveillance of the external borders and on return.

As the legal basis for the proposal for a Regulation is under Title IV of the Treaty establishing the European Community, it is affected by the “variable geometry” arising from the Protocols on the positions of the United Kingdom, Ireland and Denmark. The Community policy on integrated management of the external borders is Schengen acquis, and the present proposal for a Regulation consequently builds upon the Schengen acquis. Consideration must therefore be given to certain consequences arising from the various Protocols.

United Kingdom and Ireland

According to Articles 4 and 5 of the Protocol integrating the Schengen acquis into the framework of the European Union, “Ireland and the United Kingdom of Great Britain and Northern Ireland, which are not bound by the Schengen acquis, may at any time request to take part in some or all of the provisions of the acquis.”

This proposal constitutes a development of the Schengen acquis, in which the United Kingdom and Ireland do 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, and 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. The United Kingdom and Ireland are therefore not taking part in its adoption and are not bound by it or subject to its application.

Denmark

Under the Protocol on the Position of Denmark annexed to the Treaty on European Union , Denmark does not take part in the adoption by the Council of measures pursuant to Title IV of the Treaty establishing the European Community, with the exception of “measures determining the third countries whose nationals must be in possession of visas when crossing the external borders, or measures relating to a uniform format for visas” (former Article 100c of the Treaty establishing the European Community).

As these proposals constitute a development of the Schengen acquis and following Article 5 of the Protocol, “Denmark shall decide within a period of 6 months after the Council has decided on a proposal or initiative to build upon the Schengen acquis under the provisions of Title IV of the Treaty establishing the European Community, whether it will implement this decision in its national law”.

Norway and Iceland

In accordance with Article 6 first indent of the Schengen Protocol, an Agreement has been signed on 18 May 1999 between the Council, Norway and Iceland in order to associate those two countries with the implementation, application and development of the Schengen acquis¹¹.

Article 1 of the Agreement provides that Norway and Iceland are to be associated with the activities of the EC and the EU in the fields covered by the provisions referred to in Annexes A (provisions of the Schengen acquis) and B (provisions of European Community acts which have replaced corresponding provisions of - or were adopted pursuant to - the Schengen Convention) to the Agreement and their further development.

According to Article 2 of the Agreement, the provisions of all acts or measures taken by the European Union amending or building upon the Schengen acquis (Annex A, B) shall be implemented and applied by Norway and Iceland.

The present proposal builds upon the Schengen acquis as defined in Annex A of the Agreement.

The matter must therefore be discussed in the “Mixed Committee” provided for in Article 4 of the Agreement to allow Norway and Iceland “to explain the problems they encounter in respect of” the measure and “to express themselves on any questions concerning the development of provisions of concern to them or the implementation thereof.”

Acceding States

Since the initiative constitutes an act building upon the Schengen acquis or otherwise related to it within the meaning of Article 3(1) of the Act of Accession, it shall apply in the new Member States from accession onwards.

7. SUBSIDIARITY AND PROPORTIONALITY

Title IV on visas, asylum, immigration and other policies related to the free movements of persons creates a Community responsibility in these fields. This responsibility must, however, be exercised in accordance with Article 5 of the Treaty establishing the European Community; *i. e.* if and in so far as action taken at Community level offers clear advantages, by reason of its scale or effects, over action at Member State level. The proposal for a Regulation satisfies these criteria.

Subsidiarity

Individual national administrations are not able to establish a comprehensive and integrated European management of the operational co-operation in the fields of control of the external borders and removal of third-country nationals from the territories of the Member States. A Community structure is therefore necessary for improving the operational co-operation among them. The actual carrying out of the joint operations and pilot projects are reserved to the Member States.

Proportionality

¹¹ OJ L 176 of 10.07.99, p. 35

The Regulation establishes a Community Agency providing co-ordination of operational co-operation, financial support, as well as training and other horizontal matters in the field of control and surveillance of the external borders and removal of third-country nationals to the Member States. As a Community structure, the Agency must be subject to clear and uniform rules contained in a Council Regulation, which is the appropriate instrument for establishing Community Agencies.

8. COMMENTARY ON ARTICLES

Article 1

The Article deals with the establishment of the Agency. It sets down the objective of the Agency.

Article 2

The Article describes the main tasks of the Agency.

Article 3

The Article describes the competencies of the Agency with regard to joint operations and pilot projects at the external borders.

By “joint operation” is meant operational activities carried out by two or more Member States, and possibly in co-operation with the Agency, with a view to strengthen surveillance and control at a section of the external borders.

By “pilot project” is meant operational activities related to surveillance and control of the external borders with a view to examining the feasibility of applying a certain operational methodology and/or certain technical equipment.

The operational activities covered by Article 3 would correspond to those in the field of external border control and surveillance presently co-financed under the ARGO programme. The ARGO programme will be replaced by the Agency in so far as operational co-operation at external borders is concerned.

The Agency shall on the basis of proposals from Member States select operations and projects for co-funding and co-ordinate these projects. It may also itself launch projects and operations in co-operation with Member States. The Agency may decide to put its technical equipment at the disposal of Member States participating in projects and operations. The Agency shall evaluate the results of all operations and projects and publish a comparative analysis of the results in its general annual report to the European Parliament, the Council, the Commission, the European Social Committee and the Court of Auditors, cf. Article 18(2) (b).

Article 4

According to the Article, the Agency shall carry out general and tailored risk assessments.

General risk assessments are used to determine the risks with regard to all the EU external borders posed by illegal immigration, whereas the tailored risk analyses focus on local particularities of a certain part of the external borders or on particular trends in the *modus operandi* of illegal immigration. An example of what risk assessments can entail, could be the

assessment of the risk of illegal immigrants trying to cross a particular section of the external border, taking into account information on the surveillance of that section of the border, the geographical features of the area, as well as intelligence on the modus operandi of illegal immigration in the area in question. On the basis of an analysis of these informations, possible remedies should be identified. As risk assessment is a horizontal task at the core of the concept of integrated management of the external borders, the Agency will take over the responsibility for this task from the Finnish Risk Analysis Centre (RAC). In developing a common integrated risk assessment model, the Agency shall build upon the already established CIRAM.

Article 5

According to the Article, the Agency shall be responsible for the training of national instructors and offer seminars and additional training for officers of the national border guards. As this is a horizontal task at the core of the concept of integrated management of the external borders, the Agency will take over the responsibility for this task from the Austrian Ad-hoc Centre for Border Guard Training (ACT). In developing a common core curriculum for border guards' training, the Agency shall build upon the already established Common Core Curriculum. The common core curriculum would contain guidelines on how to carry out the tasks of a border guard officer focusing *e. g.* on lessons on enforcement measures/sanctions, control activities, investigation activities, administration, operations equipment and methods and personality development.

Article 6

According to the Article, the Agency shall closely follow developments in scientific research relevant for the control and surveillance of external borders.

As examples of types of research that the Agency should follow up on, could be mentioned research in devices for detection of illegal immigrants hiding in cars, lorries or trains, and independent scientific studies of patterns in illegal immigration.

It shall disseminate the information it obtains to the Commission and the Member States, *e. g.* through seminars and reports.

Article 7

As a measure to attain a higher degree of solidarity between Member States in this field, the Agency shall set up and keep centralised records of technical equipment of Member States for control and surveillance of the external borders. On the basis of a needs and risks assessment, the Agency can request the Member State, which owns the technical equipment in question, to put it at the disposal of another Member State for a temporary period.

Article 8

Member States confronted with circumstances requiring increased technical and operational assistance when controlling the external borders may request the Agency for assistance.

The Agency can organise the appropriate operational and technical assistance, This may consist in assistance on co-ordination with other Member States and deployment of experts on control and surveillance of the external borders together with their technical equipment. The experts can only support the competent national authorities and have no law enforcing competencies in the Member State(s) in which they are deployed.

It should be underlined, that the “circumstances requiring increased technical and operational assistance” of Article 8 of this Regulation do not correspond to the “emergency situation characterised by a sudden inflow of nationals of third countries” mentioned in Article 64 (2) of the Treaty. Moreover, whereas the provisional measures adopted by the Council with reference to Article 64 (2) are of a legislative and political nature, the actions that could be taken by the Agency under Article 8, are obviously limited to purely operational and technical assistance on the ground in order to re-establish a high level of control and surveillance of the section of the external border in question.

Article 9

The Agency will provide Member States with the necessary technical support in organising joint return operations, *e.g.* by developing a network of contact points to that end, by keeping an up-to-date inventory of existing and available resources and facilities, or by preparing specific guidelines and recommendations on joint return operations.

Article 10

This Article authorises the Agency to set up information exchange systems with the Commission and the Member States. The Agency may for this purpose decide to use already existing facilities, such as the ICONET system.

Article 11

The Agency should be able to exchange strategic non-personal information both with EUROPOL (acting within the third pillar of the Community framework and tasked with the fight against illegal immigration networks and trafficking in human beings) and relevant competent authorities of third countries, as well as international organisations, such as Interpol. Such information exchange is deemed vital for the Agency’s ability to gather the necessary intelligence for its risk assessments. Already today, EUROPOL is heavily involved in the work done in this field in the framework of the Common Unit.

As mentioned above, the information exchanged between the Agency and other relevant actors would not contain personal data, but focus on general information on recent trends in and *modus operandi* of illegal immigration.

The Article consequently authorises the Agency to co-operate on exchange of strategic non-personal information with the above mentioned actors. The information exchanged must be relevant for the tasks of the Agency.

Article 12

The Article deals with the legal status of the agency and its location.

Article 13

The specialised branches provided for in this Article will build upon the existing land, air, and maritime border centres set up by Member States in the framework of the External Borders Practitioners’ Common Unit, which will then become integrated parts of the Agency. The specialised branches of the Agency shall be staffed with national experts seconded by Member States, in so far as possible drawing on the expert staff of the existing border centres.

Article 14

The Article contains the general rules concerning the staff of the Agency.

Article 15

The Article deals with the privileges and immunities conferred on the staff of the Agency.

Article 16

The Article stipulates the liability of the Agency.

Article 17

The Article deals with the powers of the Management Board of the Agency.

Article 18

The Article describes the composition of the Management Board of the Agency.

Article 19

The Article deals with the chairmanship of the Management Board of the Agency.

Article 20

The Article contains the provisions on meetings of the Management Board of the Agency.

Article 21

The Article contains the provisions on voting in the Management Board of the Agency.

Article 22

The Article describes the functions and powers of the Executive Director of the Agency.

Article 23

The Article sets out the procedure for appointing and dismissing the senior officials of the Agency as well as describes the general qualifications they shall meet. It defines the terms of office applicable to the senior officials.

Article 24

The Article deals with translation of documents and correspondence of the Agency.

Article 25

The Article deals with transparency of the Agency and the rules applicable to its communication.

Article 26

The Article deals with the budget of the Agency.

Article 27

This Article deals with the implementation and control of the budget of the Agency.

Article 28

The Article provides for combating fraud.

Article 29

The Article contains an evaluation clause according to which the Agency shall submit itself to an independent external evaluation within three years from the date it has taken up its responsibilities and every five years thereafter.

Article 30

The Article deals with the adoption of the Agency's financial rules.

Article 31

The Article contains the date of entry into force of the Regulation. It prescribes that the Agency will take up its responsibilities from 1 January 2005.

Proposal for a
COUNCIL REGULATION

Establishing a European Agency for the Management of Operational Co-operation at the External Borders

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 66 thereof,

Having regard to the proposal from the Commission¹²,

Having regard to the opinion of the European Parliament¹³,

Having regard to the opinion of the European Economic and Social Committee¹⁴,

Having regard to the opinion of the Committee of the Regions¹⁵,

Whereas:

- (1) Community policy in the field of the EU external borders aims at an integrated management ensuring a uniform and high level of control and surveillance, which is a necessary corollary to the free movement of persons within the European Union and a fundamental component of an Area of Freedom, Security and Justice. To this end, the establishment of common rules on standards and procedures for the control of the external borders is foreseen;
- (2) The efficient implementation of the common rules requires an increased co-ordination of the operational co-operation between the Member States;
- (3) Taking into account the experiences of the External Borders Practitioners' Common Unit¹⁶, acting within the Council, a specialised expert body tasked with improving the co-ordination of operational co-operation between Member States in the field of external border management should therefore be established in the shape of a European Agency for the Management of Operational Co-operation at the External Borders;

¹² OJ C , , p. .

¹³ OJ C , , p. .

¹⁴ OJ C [...], [...], p. [...].

¹⁵ OJ C [...], [...], p. [...].

¹⁶ Communication from the Commission to the Council and the European Parliament – towards integrated management of the external borders of the Member States of the European Union (COM(2002) 233 final)

- (4) The Agency should facilitate the application of existing and future Community measures relating to the management of the external borders by ensuring the co-ordination of Member States' actions in the implementation of those measures;
- (5) Based on a common integrated risk analysis model, the Agency should carry out risk analyses in order to provide the Community and the Member States with adequate information to allow for appropriate measures to be taken or to tackle identified threats and risks in view of improving the integrated management of external borders;
- (6) The Agency should provide training at European level for national instructors of border guards and additional training and seminars related to control and surveillance at the external borders and removal of third country nationals illegally resident in the Member States for officers of the competent national services;
- (7) The Agency should follow up on the developments in scientific research relevant for its field and disseminate this information to the Commission and the Member States;
- (8) The Agency should manage lists of technical equipment provided by the Member States, thereby contributing to the "pooling" of material resources;
- (9) The Agency should also support Member States in circumstances requiring increased technical and operational assistance at the external borders;
- (10) In most Member States, the operational aspects of return of third-country nationals illegally residing in the Member States fall under the competencies of the authorities responsible for controlling the external borders. As there is a clear added value in performing these tasks at European level, the Agency should, subject to the Community return policy, accordingly co-ordinate and organise return operations of Member States and develop best practices on the acquisition of travel documents and return of third-country nationals from the territories of the Member States;
- (11) For the purpose of fulfilling its mission, the Agency should co-operate on the exchange of strategic non-personal information with Europol and the competent authorities of third countries 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;
- (12) Building upon the experiences of the External Borders Practitioners' Common Unit and the centres specialised in the different aspects of control and surveillance of land, air, and maritime borders respectively, which have been set up by Member States, the Agency may itself create specialised branches responsible for dealing with land, air, and maritime borders;
- (13) The Agency should be independent in relation to technical matters and have legal, administrative and financial autonomy. To that end, it is necessary and appropriate that it should be a Community body having legal personality and exercising the implementing powers, which are conferred to it by this Regulation;
- (14) In order to guarantee the full autonomy and independence of the Agency, it should be granted an autonomous budget whose revenue comes essentially from a contribution from the Community. The Community budgetary procedure should be applicable as

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

- (15) Regulation (EC) No 1073/1999 of the European Parliament and of the Council of 25 May 1999 concerning investigations conducted by the European Anti-Fraud Office (OLAF)¹⁷ should apply without restriction to the Agency, which should accede to the Inter-institutional Agreement of 25 May 1999 between the European Parliament, the Council of the European Union and the Commission of the European Communities concerning internal investigations by the European Anti-Fraud Office (OLAF)¹⁸;
- (16) Regulation (EC) No 1049/2001¹⁹ regarding public access to European Parliament, Council and Commission documents should apply without restriction to the Agency.
- (17) The Commission and the Member States should be represented within a Management Board in order to control effectively the functions of the Agency. This Board should be entrusted with the necessary powers to establish the budget, verify its execution, adopt the appropriate financial rules, establish transparent working procedures for decision making by the Agency and appoint the Executive Director.
- (18) In accordance with the principles of subsidiarity and proportionality, as set out in Article 5 of the Treaty, the objectives of the proposed action cannot be sufficiently achieved by the Member States and can therefore, by reason of the need for creating an integrated management of the external borders of the Member States of the European Union, be better achieved by the Community. This Regulation confines itself to the minimum required in order to achieve those objectives and does not go beyond what is necessary for that purpose.
- (19) Bearing in mind the constantly changing nature of the challenges to efficient management of the external borders, a possible gradual widening of the scope of action of the Agency should be provided for. Such a wider scope could *e. g.* encompass tasking the Agency with the carrying out of inspections at the external borders and the facilitation of operational co-operation with relevant third countries and international organisations, taking into account the institutional framework of the European Community. This Regulation should apply to any other area related to the management of the external borders on a basis of a future proposal in accordance with the Treaty establishing the European Community
- (20) Recalling that efficient control and surveillance of the external borders is a matter of the utmost importance to Member States regardless of their geographical position. Accordingly there is a need for promoting solidarity between Member States in the field of external border management. The establishment of the Agency, assisting Member States with implementing the operational aspects of external border management, including return of third-country nationals illegally residing in the Member States, constitutes an important step in this direction;
- (21) As regards Iceland and Norway, this Regulation constitutes a development of the Schengen acquis within the meaning of the Agreement concluded by the Council of

¹⁷ OJ L 136 of 31.5.1999, p. 1

¹⁸ OJ L 136 of 31.5.1999, p. 15

¹⁹ OJ L 145 of 31.5.2001, 43

the European Union and the Republic of Iceland and the Kingdom of Norway concerning the association of those States with the implementation, application and development of the Schengen acquis, which fall within the area referred to in Article 1, points A and E of Council Decision 1999/437/EC²⁰ on certain arrangements for the application of that Agreement;

- (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 is not taking part in the adoption of this Regulation and is not bound by it, or subject to its application. Given that this Regulation builds upon the Schengen acquis under the provisions of Title IV of Part Three of the Treaty establishing the European Community, Denmark should, in accordance with Article 5 of the said Protocol, decide within a period of six months after the Council has adopted this Regulation whether it will implement it in its national law or not;
- (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; 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 acquis²¹; Ireland is therefore not taking part in its adoption and is not bound by it or subject to its application;
- (25) This Regulation constitutes an act building on the Schengen acquis or otherwise related to it within the meaning of Article 3(1) of the Act of Accession;
- (26) This Regulation respects the fundamental rights and observes the principles recognised by Article 6(2) of the Treaty on European Union and reflected in the Charter of Fundamental Rights of the European Union;

HAS ADOPTED THIS REGULATION:

²⁰ OJ L 176 of 10.7.1999, p. 31

²¹ OJ L 131 of 1.6.2000, p. 43

CHAPTER I

Subject matter

Article 1

Establishment of the Agency

1. A European Agency for the Management of Operational Co-operation at the External Borders (the Agency) is established in view of an integrated management of the external borders of the European Union.
2. The Agency shall facilitate the application of existing and future Community measures relating to the management of the external borders by ensuring the co-ordination 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 European Union.
3. The Agency shall also provide the Commission and the Member States with the necessary technical support and expertise in the management of the external borders and promote solidarity between Member States.

CHAPTER II

Tasks

Article 2

Main tasks

The Agency shall perform the following tasks:

- a) co-ordinate the operational co-operation between Member States in the field of control and surveillance of the external borders.
- b) assist Member States on training of national border guards.
- c) carry out risk assessments.
- d) follow up on the development of research relevant for the control and surveillance of the external borders.
- e) assist Member States in circumstances requiring increased technical and operational assistance at the external borders.

- f) co-ordinate operational co-operation between Member States in the field of removal of third-country nationals illegally residing in the Member States.

Article 3

Joint operations and pilot projects at the external borders

1. The Agency shall evaluate, approve and co-ordinate proposals for joint operations and pilot projects made by Member States.

The Agency may itself launch initiatives for joint operations and pilot projects in co-operation with Member States.

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

2. The Agency may operate through its specialised branches provided for in Article 13, for the practical organisation of joint operations and pilot projects.
3. The Agency shall evaluate the results of the joint operations and pilot projects and make a comprehensive comparative analysis of those results in view of enhancing the quality, coherence and efficiency of future operations and projects to be included in its annual report provided for in Article 17 (2) (b).
4. The Agency may decide to co-finance the operations and projects referred to in paragraph 1, with grants from its budget in accordance with the financial rules applicable to the Agency.

Article 4

Risk assessment

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

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

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

Article 5

Training

The Agency shall establish and further develop a common core curriculum for border guards' training and provide training at European level for instructors of the national border guards of Member States.

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

Article 6
Follow-up to research

The Agency shall follow up on 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
Management of technical equipment

The Agency shall set up and keep centralised records of technical equipment for control and surveillance of the external borders belonging to Member States, which they, on a voluntary basis, are willing to put at the disposal of each other for a temporary period following a needs and risks assessment carried out by the Agency.

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

1. Without prejudice to Article 64 (2) of the Treaty establishing the European Community, one or more Member States confronted with circumstances requiring increased technical and operational assistance when implementing their obligations with regard to control and surveillance of the external borders may request the Agency for assistance. The Agency can organise the appropriate technical and operational assistance for the requesting Member State(s).
2. Under the circumstances referred to in paragraph 1, the Agency can:
 - a) assist on matters of co-ordination between two or more Member States with a view to tackling the problems encountered at the external borders;
 - b) deploy its experts to support the competent national authorities of the Member State(s) involved.
3. The Agency may acquire technical equipment for control and surveillance of the external borders to be used by its experts for the duration of the deployment in the Member State(s) in question.

Article 9
Return co-operation

1. The Agency shall subject to the Community return policy co-ordinate or organise joint return operations of Member States. The Agency may use Community financial means available in the field of return.

2. The Agency shall identify best practices on the acquisition of travel documents and the removal of illegally residing third-country nationals from the territories of the Member States.

Article 10
Information exchange systems

The Agency may take all necessary measures to facilitate the exchange of information relevant for its tasks with the Commission and the Member States.

Article 11
Exchange of strategic non-personal information with Europol, international organisations and competent authorities of third countries

The Agency may co-operate on the exchange of strategic non-personal information with Europol, the competent authorities of third countries and the international organisations competent in matters covered by this Regulation in the framework of working arrangements concluded with those bodies, in accordance with the relevant provisions of the Treaty.

CHAPTER III

Structure

Article 12
Legal status and location

The Agency shall be a body of the Community. It shall have legal personality.

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

It shall be independent in relation to technical matters.

The Agency shall be represented by its Executive Director.

The seat of the Agency shall be at [...].

Article 13
Specialised branches

The Agency shall evaluate the need for and decide the setting up of specialised branches in the Member States, subject to their consent.

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

Each specialised branch shall submit a detailed annual report to the Agency on its activities as well as provide any other type of information relevant for the co-ordination of operational co-operation.

Article 14
Staff

1. The Staff Regulations of officials of the European Communities, the Conditions of employment of other servants of the European Communities and the rules adopted jointly by the institutions of the European Communities for purposes of the application of those Staff Regulations and Conditions of employment shall apply to the staff of the Agency.
2. The powers conferred on the appointing authority by the Staff Regulations, and by the Conditions of employment of other servants, shall be exercised by the Agency in respect of its own staff.
3. The Agency's staff shall consist of a limited number of officials and of national experts in the field of control and surveillance of the external borders seconded by the Member States to carry out management duties. The remaining staff shall consist of other employees recruited by the Agency as necessary to carry out its tasks.

Article 15
Privileges and immunities

The Protocol on the Privileges and Immunities of the European Communities shall apply to the Agency.

Article 16
Liability

1. The contractual liability of the Agency shall be governed by the law applicable to the contract in question.
2. The Court of Justice of the European Communities shall have jurisdiction to give judgement pursuant to any arbitration clause contained in a contract concluded by the Agency.
3. In the case of non-contractual liability, the Agency shall, in accordance with the general principles common to the laws of the Member States, make good any damage caused by its departments or by its servants in the performance of their duties.
4. The Court of Justice shall have jurisdiction in disputes relating to compensation for the damage referred to in paragraph 3.
5. The personal liability of its servants towards the Agency shall be governed by the provisions laid down in the Staff Regulations or Conditions of employment applicable to them.

Article 17
Powers of the Management Board

1. The Agency shall have a Management Board.
2. The Management Board shall:
 - a) appoint the Executive Director on a proposal from the Commission in accordance with Article 23;
 - b) before 31 March each year, adopt the general report of the Agency for the previous year and forward it by 15 June at the latest to the European Parliament the Council, the Commission, the European Economic and Social Committee, the Court of Auditors. The general report shall be made public;
 - c) before 30 September each year, and after receiving the opinion of the Commission, adopt, by a three-quarters majority of its members, the Agency's programme of work for the coming year and forward it to the European Parliament, the Council, the Commission; this programme of work shall be adopted according to the annual Community budgetary procedure and the Community legislative programme in relevant areas of the management of external borders;
 - d) establish procedures for making decisions related to the operational tasks of the Agency by the Executive Director;
 - e) carry out its functions relating to the Agency's budget pursuant to Articles 25, 26 (3), and 29;
 - f) exercise disciplinary authority over the Executive Director and over the Deputy Director, in agreement with the Executive Director;
 - g) establish its Rules of Procedure;
 - h) establish the organisational structure of the Agency and adopt the Agency's staffing policy.
3. The Management Board may advise the Executive Director on any matter strictly related to strategic development of operational management of the external borders, including follow-up to research as defined in Article 6 of this Regulation.⁴ It shall forward annually to the budgetary authority any information relevant to the outcome of the evaluation procedures.

Article 18
Composition of the Management Board

1. The Management Board shall be composed of twelve members and two representatives of the Commission. The Council shall appoint the members as well as their alternates who will represent them in their absence. The Commission shall appoint its representatives and their alternates. The duration of the terms of office shall be four years. This term of office shall be extendable once.

2. The Agency shall be open to the participation of European third countries, which have entered into agreements with the European Community whereby they have adopted and are applying Community law in the field covered by this Regulation and its implementing rules. Under the relevant provisions of these agreements, arrangements will be developed which shall, *inter alia*, specify the nature and extent of, and the detailed rules for, the participation by these countries in the work of the Agency, including provisions on financial contributions and staff.

Article 19
Chairmanship of the Management Board

1. The Management Board shall elect a Chairperson and a Deputy Chairperson from among its members. The Deputy Chairperson shall *ex-officio* replace the Chairperson in the event of his/her being prevented from attending to his/her duties.
2. The term of office of the Chairperson and Deputy Chairperson shall expire when their respective membership of the Management Board ceases. Subject to this provision, the duration of the terms of office of the Chairperson or Deputy Chairperson shall be two years. These terms of office shall be extendable once.

Article 20
Meetings

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

Article 21
Voting

1. Without prejudice to Article 17 (2) (c) and 23 (2), the Management Board shall take its decisions by an absolute majority of its members.
2. Each member shall have one vote. The Executive Director of the Agency shall not vote. In the absence of a member, his/her alternate shall be entitled to exercise his/her right to vote.

3. The rules of procedure shall establish the more detailed voting arrangements, in particular, the conditions for a member to act on behalf of another member as well as any quorum requirements, where appropriate.

Article 22

Functions and powers of the Executive Director

1. The Agency shall be managed by its Executive Director, who shall be completely independent in the performance of his/her duties. Without prejudice to the respective competencies of the Commission and the Management Board, the Executive Director shall neither seek nor take instructions from any government or from any other body.
2. The European Parliament or the Council may invite the Executive Director of the Agency to report on the carrying out of his/her tasks.
3. The Executive Director shall have the following functions and powers:
 - a) to prepare and implement the decisions and programmes and activities adopted by the Agency's Management Board within the limits specified by this Regulation, its implementing rules and any applicable law.
 - b) to take all necessary steps, including the adoption of internal administrative instructions and the publication of notices, to ensure the functioning of the Agency in accordance with the provisions of this Regulation.
 - c) to prepare each year a draft working programme and a report activity and submit them to the Management Board.
 - d) to exercise in respect of the staff the powers laid down in Article 14 (2).
 - e) to draw up estimates of the revenues and expenditure of the Agency pursuant to Article 26, and implement the budget pursuant to Article 27.
 - f) to delegate his/her powers to other members of the Agency's staff subject to rules to be adopted in accordance with the procedure referred to in Article 17 (2) (g).
4. The Executive Director shall be accountable for his activities to the management board.

Article 23

Appointment of senior officials

1. The Commission shall propose candidates for the post of the Executive Director based on a list following publication of the post in the Official Journal and other press or internet sites as appropriate.
2. The Executive Director of the Agency shall be appointed by the Management Board on the grounds of merit and documented administrative and management skills, as

well as his/her relevant experience in the field of management of the external borders. The Management Board shall take its decision by a two-thirds majority of all members with a right to vote.

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

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

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

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

Article 24 Translation

1. Without prejudice to decisions taken on the basis of Article 290 of the Treaty establishing the European Community, the annual activity report and programme of work referred to in Article 17(2)(b) and (c), shall be produced in all official languages of the Community.
2. The translation services required for the functioning of the Agency shall be provided by the Translation Centre for bodies of the European Union.

Article 25 Transparency and communication

1. Six months after the entry into force of the Regulation, the Agency shall be subject to Regulation (EC) No 1049/2001 when handling applications for access to documents held by it.
2. The Agency may communicate on its own initiative in the fields within its mission. It shall ensure in particular that, in addition to the publication specified in Article 17(2)(b), the public and any interested party are rapidly given objective, reliable and easily understandable information with regard to its work.
3. The Management Board shall lay down the practical arrangements for the application of paragraphs 1 and 2.

4. Any natural or legal person shall be entitled to address himself/herself in writing to the Agency in any of the languages referred to in Article 314 of the Treaty. He/she has the right to receive an answer in the same language.
5. Decisions taken by the Agency pursuant to Article 8 of Regulation (EC) No 1049/2001 may give rise to the lodging of a complaint to the Ombudsman or form the subject of an action before the Court of Justice of the European Communities, under the conditions laid down in Articles 195 and 230 of the Treaty respectively.

CHAPTER IV

Financial requirements

Article 26

Budget

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

budget, which it shall place before the budgetary authority in accordance with Article 272 of the Treaty.

8. The budgetary authority shall authorise the appropriations for the subsidy to the Agency.

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

9. The Management Board adopts the budget of the Agency. It shall become final following the final adoption of the general budget of the European Union. Where appropriate, it shall be adjusted accordingly
10. Any modification to the budget, including the establishment plan, shall follow the same procedure.
11. The Management Board shall, as soon as possible, notify the budgetary authority of its intention to implement any project, which may have significant financial implications for the funding of its budget, in particular any projects relating to property such as the rental or purchase of buildings. It shall inform the Commission thereof.

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

Article 27

Implementation and control of the budget

1. The Executive Director shall implement the budget of the Agency.
2. By 1 March at the latest following each financial year, the Agency's accounting officer shall communicate the provisional accounts to the Commission's accounting officer together with a report on the budgetary and financial management for that financial year. The Commission's accounting officer shall consolidate the provisional accounts of the institutions and decentralised bodies according with Article 128 of the general Financial Regulation.
3. By 31 March at the latest following each financial year, the Commission's accounting officer shall forward the Agency's provisional accounts to the Court of Auditors, together with a report on the budgetary and financial management for that financial year. The report on the budgetary and financial management for that financial year shall also be forwarded to the European Parliament and the Council.
4. On receipt of the Court of Auditors' observations on the Agency's provisional accounts, pursuant to Article 129 of the general Financial Regulation, the Director shall draw up the Agency's final accounts under his own responsibility and forward them to the Management Board for an opinion.
5. The Management Board shall deliver an opinion on the Agency's final accounts.

6. By 1 July of the following year at the latest, the Executive Director shall send the final accounts, together with the opinion of the Management Board, to the Commission, the Court of Auditors, the European Parliament and the Council.
7. The final accounts shall be published.
8. The Director shall send the Court of Auditors a reply to its observations by 30 September at the latest. He shall also send this reply to the Management Board.
9. The European Parliament, upon a recommendation from the Council, shall, before 30 April N+2, give a discharge to the Executive Director of the Agency in respect of the implementation of the budget for the year N.

Article 28
Combating fraud

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

Article 29
Evaluation

1. Within three years from the date of the Agency having taken up its responsibilities, and every five years thereafter, the Management Board shall commission an independent external evaluation on the implementation of this Regulation.
2. The evaluation shall examine how effectively the Agency fulfils its mission. It shall also assess the impact of the Agency and its working practices. The evaluation shall take into account the views of stakeholders, at both European and national level.
3. The Management Board shall receive the findings of the evaluation and issue recommendations regarding changes to this Regulation, the Agency and its working practices to the Commission, which may forward them, together with its own opinion as well as appropriate proposals, to the Council. An action plan with a timetable shall be included, if appropriate. Both the findings and the recommendations of the evaluation shall be made public.

Article 30
Financial provision

The financial rules applicable to the Agency shall be adopted by the Management Board after the Commission has been consulted. They may not depart from the Commission Regulation (EC, Euratom) No 2343/2002 of 19 November 2002 on the framework Financial Regulation for the bodies referred to in Article 185 of Council Regulation (EC, Euratom) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities, unless specifically required for the Agency's operation and with the Commission's prior consent.

Article 31
Entry into force

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

The Agency shall take up its responsibilities from 1 January 2005.

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

Done at Brussels,

For the Council
The President

ANNEX

LEGISLATIVE FINANCIAL STATEMENT

Policy area(s): 18 Justice and Home Affairs (JAI)

Activit(y/ies): 18 02 EXTERNAL BORDERS, VISA POLICY AND FREE MOVEMENT OF PEOPLE

TITLE OF ACTION: PROPOSAL OF A COUNCIL REGULATION ESTABLISHING A EUROPEAN AGENCY FOR THE MANAGEMENT OF OPERATIONAL CO-OPERATION AT THE EXTERNAL BORDERS

1. BUDGET LINE(S) + HEADING(S)

From 2005 onwards a new budget heading with two budget lines will be created:

- 18 02 XX 01: administrative expenditure (Title 1 & 2)
- 18 02 XX 02: operational expenditure (Title 3)

2. OVERALL FIGURES

2.1. Total allocation for action: XX €million for commitment

A maximum of €15 millions per annum for 2005 and 2006 is available following the agreement reached at the College when adopting the Communication on the development of a common policy on illegal immigration, smuggling and trafficking of human beings, external borders and the return of illegal residents²² from 3 June 2003.

From 2007 onwards the allocation of appropriations will depend on the new financial perspectives.

2.2. Period of application: 2004 - 2009

An indicative timetable for the establishment of the Agency could be the following:

- Expected adoption and entry into force of the Regulation: 1st semester 2004:
- Transitional phase: starting from the entry into force of the Regulation until the Agency becomes operational (take up its responsibilities). During this period the Commission will carry out the necessary tasks for the establishment of the Agency.
- Operational phase: The Agency is established and ready to take-up its responsibilities in accordance with the Regulation.

²² COM(2003) 323 final

2.3. Overall multiannual estimate of expenditure:

- (a) **Operational expenditure (Title 3):** Schedule of commitment appropriations (*see point 6.2.1 and 6.2.2 operational expenditure*).

Commitment Appropriations in €million

	2004	2005	2006	2007	2008	2009	[n+5 and subs. Years]	Total
Annual or recurrent costs		5,000	6,440	6,440	6,440	6,440	6,440	
Specific technical equipment			1,000	7,000	7,000			
Total		5,000	7,440	13,440	13,440	6,440	6,440	

- (b) **Administrative expenditure (Title 1 & 2)** Schedule of commitment appropriations (*see points 6.1.1 and 6.1.2*)

Commitment Appropriations in €million

		1,157	2,314	2,314	2,314	2,314	2,314	
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- (c) **Overall Total :** Schedule of commitment/payment appropriations

TOTAL a+b	2004	2005	2006	2007	2008	2009	[n+5 and subs. Years]	Total
Commitments		6,157	9,754	15,754	15,754	8,754	8,754	
Payments		6,157	9,754	15,754	15,754	8,754	8,754	

- (d) Incidence financière globale des ressources humaines et autres dépenses de fonctionnement pour la Commission (*see Points 7.2 et 7.3*)

Commitments/ Payments	0,343	0	0	0	0	0	0	
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TOTAL c+d	2004	2005	2006	2007	2008	2009	[n+5 and subs. Years]	Total

Commitments	0,343	6,157	9,754	15,754	15,754	8,754	8,754	
Payments	0,343	6,157	9,754	15,754	15,754	8,754	8,754	

2.4. Compatibility with financial programming and financial perspective

Proposal is compatible with existing financial programming (until 2006).

Proposal will entail reprogramming of the relevant heading in the financial perspective.

Proposal may require application of the provisions of the Interinstitutional Agreement.

2.5. Financial impact on revenue:²³

Proposal has no financial implications (involves technical aspects regarding implementation of a measure)

OR

Proposal has financial impact – the effect on revenue is as follows:

The present proposal builds upon the Schengen acquis as defined in Annex A of the Agreement signed on 18 May 1999 between the Council, and the Republic of Iceland and the Kingdom of Norway concerning the association of those both States with the implementation, application and development of the Schengen acquis²⁴. The article 12 (1) last paragraph lays down:

“In cases where operational costs are attributed to the general budget of the European Community, Iceland and Norway shall share in these costs by contributing to the said budget an annual sum in accordance with the percentage of the gross national product of their countries in relation with the gross national product of all participating States”

The contribution from Iceland/Norway: 2,128% (2002 figures)

(€million to one decimal place)

Budget line	Revenue	Prior to action [Year n-1]	Situation following action					
			2005	2006	2007	2008	2009	[n+5]
New budget line under	<i>a) Revenue in absolute terms</i>		0,1	0,3	0,3	0,2	0,2	0,2

²³ For further information, see separate explanatory note.

²⁴ OJ L 176 of 10.07.99, p. 35

chapter 1802	b) Change in revenue	Δ						
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Other third countries that may be associated to the development of the Schengen acquis and participate therefore in this Agency will also have to contribute to the Community budget.

3. BUDGET CHARACTERISTICS

Type of expenditure		New	EFTA contribution	Contributions from applicant countries	Heading in financial perspective
Non-compulsory	Diff/	YES/	NO	NO	No [3]

4. LEGAL BASIS

Article 66 TEC.

5. DESCRIPTION AND GROUNDS

5.1. Need for Community intervention

5.1.1. Objectives pursued

The main objective of this Agency is to improve the operational co-operation between the Member States at the external borders and to promote solidarity in this field and an equivalent level of protection of all the external borders of the EU. These objectives are not new, the Commission's communication of May 2002²⁵ already referred to the essential components for an integrated management of the external borders. The Seville European Council and the Council when adopting its action plan²⁶ followed this line. The draft Constitution under the specific provisions for implementing an area of freedom, security and justice (cf. article I-41) recognises the importance of the operational co-operation between the competent authorities of the Member States for creating the FSJ area.

The Agency shall in particular carry out the following tasks:

- Co-ordination of joint operations and pilot projects between Member States and between Member States and the Community with a view to improving the control and surveillance at the EU external borders;
- Providing training at European level for instructors of national border guards of Member States as well as supplementary training to officers of national border guards;
- Carrying out general and tailored risk analyses;

²⁵ Communication from the Commission to the Council and the European Parliament: Towards integrated management of the external borders of the Member States of the European Union of May 7, 2002 (COM(2002) 233 final)

²⁶ Plan for the management of the external borders of the Member States of the European Union agreed by the Council (JHA) on June 13, 2002 (Doc. 10019/02 FRONT 58 COMIX 398)

- Follow-up on research relevant for control and surveillance of EU external borders and provide the Commission and Member States with technical expertise;
- Co-ordination between Member States in the field of return of third-country nationals illegally resident in Member States;
- Support to Member States confronted with circumstances requiring increased technical and operational assistance in connection with their control and surveillance of the EU external borders;
- Managing technical equipment of Member States (common lists of equipment and procurement of new equipment to put at the disposal of the Member States);

Among these tasks, the first four bullet points refer to activities currently carried out by the Member States with the support - in many cases – of Community funds from the ARGO programme and are co-ordinated by the Common Unit of external borders practitioners within the Council. The remaining three bullet points indicate the activities or tasks of the Agency that are new and which the Common Unit is not covering.

The added value of the Agency will be achieved when taking over the activities that are today covered by various projects on the development of a common integrated risk assessment model (CIRAM), a common core curriculum for border guards' training and research in technologies relevant for control and surveillance of the external borders respectively.. These activities are horizontal matters at the very core of the concept of integrated management of the external borders. They are not linked to a particular type of border, and they should accordingly be managed centrally in order to ensure the coherence and the uniformity of the concepts and criteria to be applied in all the Member States.

The creation of an Agency tasked with co-ordinating the operational aspects of control and surveillance of the external borders and taking decisions to co-finance certain activities constitutes a concrete and important step towards achieving solidarity between Member States in the field of the management of the external borders. The Agency will also set up and keep centralised records of technical border control equipment, that Member States would be willing to put at the disposal of each other on a temporary basis following needs and risks assessment carried out by the Agency. This will increase in this way the capacity of mobilising resources or capabilities of the Member States.

The Agency will itself acquire technical equipment for its experts, but this equipment can also be put at the disposal of Member States participating in joint operations and pilot projects. In this way the Agency will make a significant contribution with regard to burden sharing.

One of the main advantages of establishing a centralised structure such as an Agency in the field of operational border management would be the improved ability to assist in tackling a possible critical and unforeseen situation at the external borders at European level. This new body would therefore also improve the risk prevention and risk management capacities of the Member States.

This Agency as independent body could also carry out in the future inspections at the external borders of the Member States and act as interface between Member States and third countries or relevant international organisations that which will strengthen the credibility and visibility of the Community action in the field.

5.1.2. Measures taken in connection with ex ante evaluation

The Commission has carried out an *ex ante* evaluation of the proposal to create a European Agency for the Management of Operational Co-operation at the External Borders.

An analysis of the experiences of the Common Unit clearly points to the need for an independent and highly professional co-ordination structure, if the problems encountered by the Common Unit are to be overcome.

The *ex ante* evaluation has shown that the creation of an agency is a better and more cost-effective choice for achieving the objective of enhancing operational co-operation at the external borders than any of the alternative delivery mechanisms examined (the reinforced Common Unit and the Commission itself).

For further information, reference is made to the *ex ante* evaluation of the Commission.

5.1.3. Measures taken following ex post evaluation

The last European Council in Brussels (16/17 October 2003) welcomed the Commission's intention to submit a proposal for the creation of a Border Management Agency indicating that this proposal shall draw on the experience of the Common Unit of External Border Practitioners.

The Commission has therefore taken into account for this proposal the evaluations that the the Council²⁷ and the Commission²⁸ performed in view of the Thessaloniki European Council. This evaluation of the joint operations, pilot projects and various specialised centres constituted at the same time an assessment of the work carried out by the Common Unit. One of the main shortcomings is the lack of effective operational co-ordination. This fact is borne out in the JHA Council Conclusions on a more effective management of the external borders of the EU Member States²⁹. Furthermore the aforementioned Council's report on the implementation of programmes, ad hoc centres, pilot projects and joint operations drew up conclusions dealing also on the shortcomings of the current institutional arrangements for co-ordinating the execution of the Action Plan. In particular, these conclusions pointed out:

- The evident absence of a monitoring, evaluation and impact assessment mechanism;
- The lack of implementing guidelines and an adequate legal framework for the elaboration of the joint operations;
- The lack of definition of specific and objective targets and of an adequate framework for an integrated planning of the operational actions at Community level.

²⁷ Report of the Presidency to COREPER/the Council on the implementation of programmes, ad hoc centres, pilot projects and joint operations of June 3 2003 (Doc. 10058/03 FRONT 70 COMIX 354)

²⁸ Communication from the Commission to the European parliament and the Council in view of the European Council of Thessaloniki on the development of a common policy on illegal immigration, smuggling and trafficking of human beings, external borders and the return of illegal residents of May 23, 2003 (COM(20003) 323 final).

²⁹ Doc. 10274/03 FRONT 76 of June 6, 2003

This is why the Greek Presidency's report solicited "the upgrading of the co-ordination and operational role of SCIFA+" as an indispensable condition for a successful development of the centres and the other projects and joint operations.

Furthermore, that report pleaded for the institutionalisation of the centres and the examination of a "new institutional structure in order to enhance operational co-operation for the management of external borders".

The ARGO programme provided funding (grants) for several of the aforementioned joint operations and pilot projects. The Commission will submit a first implementation report on ARGO by the end of 2003. However it can be advanced already that the overall quality of the proposals submitted or of the results of the actions carried out in the field of external borders is not satisfactory. An Agency that gathers expertise in the field and that assumes also the roles of approving, co-ordinating, evaluating the actions and takes eventually the decision to award grants to certain proposals will contribute to improve the quality and results of the actions.

5.2. Actions envisaged and budget intervention arrangements

Transitional phase (2004): Once the Regulation is adopted and entered into force the Commission will start the necessary arrangements for establishing the Agency, e.g. the setting-up and providing administrative support to the management board, preparation of legal texts, publication of notices and recruitment procedure of the Executive and Deputy Director. These tasks will only have an impact on staff and administrative expenditure for the Commission (cf. point 7)

Operational phase (from 2005 onwards): The estimates for resource needed during the 1st operational phase (2005-2006) take into account the financial constraints (ceilings established in the financial perspective). The calculations are based on a 'stand-alone' entity (i.e. not reliant on the Commission's infrastructure and staff). The costs can be grouped in two main categories:

Personnel and administrative costs:

The Agency's staff shall consist of a limited number of officials and of national experts in the field of control and surveillance of the external borders seconded by the Member States to carry out management duties. The remaining staff shall consist of other employees recruited by the Agency as necessary to carry out its tasks. Staff costs are shown on a 12-month basis and personnel and administrative expenditure is € 0,108 million a year per person (Community officials) including buildings and related administrative expenditure (IT, telecommunications, etc)

The necessary number of staff in a first operational phase (2005-2006) is estimated at 27. The work force will be composed by 15 A posts (among them 10 ENDS), 5 B posts, 5 C posts and 2 D posts. The number of staff may increase following the assignments to the Agency of new tasks by the Council and in accordance with the financial resources allocated to the Agency by the budgetary authority for the post 2007 period. The security personnel for the building and infrastructures is not part of the Agency's staff and is not reflected in the following table. The provision of security services will be outsourced.

TABLE: Estimate of human resources - Breakdown by areas of activity and category

ACTIVITIES	A	B	C	D
Administration	5	3	3	2
Management (this item includes the Executive and Deputy Director).	2	0	2	
Human and financial resources	1	2	1	
Information/IT	1	1		
Legal tasks	1			
Operational tasks:	10	2	2	
Co-ordination of joint operations and pilot projects at the external borders	2		1	
Carrying out general and tailored risk analyses	2			
Provide training for national instructors and specific training for border guards.	2			
Follow-up on research relevant for control and surveillance of EU external borders and provide the Commission and Member States with technical expertise	1			
Support to Member States confronted with circumstances requiring increased technical and operational assistance in connection with their control and surveillance of the EU external borders	2			
Co-ordination between Member States in the field of return of third-country nationals illegally resident in Member States;	1		1	
Management of records of technical equipment of the Member States and procurement of new equipment		2		
TOTAL	15	5	5	2

Operational costs

These costs can be divided according to the different tasks of the Agency:

- (1) Co-ordination of joint operations and pilot projects at the external borders proposed by the Member States (co-ordination and evaluation by the Agency). The Agency may award grants to certain operations and projects. There are also costs resulting from missions of agency's staff to the external borders or national premises for coordination, follow-up or evaluation of the projects or operations. The amount per

mission within Europe is estimated at €800 per day and €1.200 per day for the rest of the world. Meetings at the Agency's premises may also be necessary for coordination and evaluation purposes.

- (2) Risk assessment exercises require some meetings with Member States' experts. The calculations are based on the following assumptions: Travel and subsistence: meetings € 800 per person/day and € 1.150 per person/two days. There is also need for the development of secure electronic channels of communication with the Member States for collecting and exchanging relevant information.
- (3) Training requires monthly meetings, seminars or workshops with national trainers of border guards.
- (4) Follow-up research and providing technical expertise will result in studies to be externalised by the Agency and some meetings or staff missions as well as preparation of reports and evaluations.
- (5) Support to Member States in circumstances requiring increased technical and operational assistance at the external borders. The Agency must purchase or lease mobile equipment to be used in the control of the external borders and which will represent the most substantial expenditure. Staff missions and transport of the specialised equipment must also be foreseen.
- (6) Return co-operation, the operational costs of joint return operations of third country nationals (transport, escorts, etc) could be borne by Community funds available in the future in the field of Return. In addition there might be some staff missions and co-ordination meetings.
- (7) Management of technical equipment (keep records of Member State's equipment) and information exchange systems. The Agency must develop the appropriate database and information system for the exchange of information with Member States and Commission.

5.3. Methods of implementation

The core tasks of the Agency such as training, risk assessment, providing technical support or expertise will be executed by its permanent staff and would only generate additional costs for staff missions and meetings (seminars and workshops).

The Agency will also co-finance certain Member States' proposals for joint operations and pilot projects that are considered of special interest or added value in connection with the Agency's work programme. The Community funds will be awarded by means of grant agreements following the rules laid down in Agency's financial Regulation.

The Agency will launch the public procurements procedures in accordance with its financial regulation for acquiring the operational equipment or for the provision of services (e.g. studies, consultancy, etc) needed for fulfilling its tasks.

6. FINANCIAL IMPACT ON THE AGENCY'S BUDGET LINES:

6.1. Administrative expenditure (Title 1 & 2):

6.1.1 Financial Impact on human resources

The amounts are total expenditure for twelve months that **include personnel costs and administrative expenditure (buildings, IT, etc)**. Exceptionally for 2005 the costs will be calculated only for a 6-month period, since the Agency will gradually recruit its staff during that year (cf. point 2.3).

Types of post	No of staff	Amount	Method of calculation
Officials or temporary staff	17	1.836.000	17* 108.000
External staff (ENDs)	10	450.000	10 * 45.000
Total	27	2.286.000	

6.1.2 Other administrative expenditure

Only meetings of the management board are indicated here, other costs resulting from missions, conferences or seminars are detailed for each task under the Agency's annual operational expenditure.

Meetings	Amount €	Method of calculation
Meetings of the management board	28.800	12 (members) * 800 (person/day)*3 meetings/year
Total	28.800	

6.2. Operational expenditure: (Title 3)

The following tables contain a break down of the operational expenditure of the Agency following their tasks and nature of the intervention.

6.2.1. Annual or recurrent costs

The costs indicated in the table bellow correspond to a fully operational agency. From 2005 the Agency will gradually assume its responsibilities and become operational, its main responsibility this year will be to provide support to joint operations and pilot projects allocating for them a budget comparable to the one of ARGO in the precedent years (cf. point 2.3).

Tasks of the Agency	Type of expenditure (cost per unit)	Number	Total
Joint operations and pilot projects at the external borders	Grants to projects. (€200.000)	* 25	5.000.000.
	Missions of agency staff (€800)	* 30	24.000.
	Coordination/evaluation meetings (€20.000)	* 4	80.000.
Risk assessment	Meetings for general and tailored risk assessment (€20.000)	* 4	80.000.
Training	Monthly two-day sessions (€28.750)	*12	345.000.
Follow-up research	Studies (€200.000)	* 4	800.000.
	Meetings (€20.000)	* 2	40.000.
Support to Member States (circumstances requiring increased technical and operational assistance)	Missions (€800)	*5	4.000.
	Transport of equipment (€1.000)	*5	5.000.
Management of technical; equipment and setting up a database	Costs are included in point 6.2.2. (procurement / maintenance of equipment)		0.
Co-ordination between Member States in the field of return	Missions (€800)	*3	2.400.
	Co-ordination meetings (20.000)	*3	60.000.
Total (annual)			6.440.400

6.2.2 Specific technical equipment

This agency must in a first stage (2005) identify its operational requirements and capability goals and examine the capacity of the agency of mobilising and pooling existing resources, in particular equipment, available in Member States that could be put at the disposal of other Member States.

Following such previous evaluation and in compliance with the principle of subsidiarity the Agency will launch the procedures for procuring its own technical equipment to support Member States in exceptional circumstances or for carrying out other activities such as joint operations. The procurement of this equipment will be done gradually starting in 2006, cf. point 2.3.

Type of equipment	Type of intervention	Total
Special transport means	Public Procurement (purchase/leasing) and maintenance	6.000.000
Equipment for surveillance and control	Public Procurement (purchase/leasing) and maintenance	4.000.000
Specific communication equipment	Public Procurement (purchase/leasing) and maintenance	4.000.000
IT system	Public Procurement (purchase/leasing) and maintenance	1.000.000
Total		15.000.000

7. IMPACT ON STAFF AND ADMINISTRATIVE EXPENDITURE FOR THE COMMISSION

7.1. Impact on human resources

These are the existing resources for the Commission in order to co-ordinate and monitor the activities of the Agency. These posts should be in place before the Agency becomes operational (i.e. 2004) in order to carry out the tasks assigned to the Commission during the transitional period (cf. point 2.2)

Types of post		Staff to be assigned to management of the action using existing and/or additional resources		Total	Description of tasks deriving from the action
		Number of permanent posts	Number of temporary posts		
Officials or temporary staff	A	1 A		3	<i>A post: policy and legislative officer, co-ordination with the Agency</i> <i>B post: financial support</i> <i>C post: administrative support</i>
	B	1 B			
	C	1 C			
Total				3	

The needs of human resources shall be covered within the allocation granted to the managing DG in the framework of the annual procedure.

7.2. Overall financial impact of human resources

Type of human resources	Amount (€)	Method of calculation *
Officials	324.000	3*108.000
Temporary staff		
Other human resources (specify budget line)		
Total	324.000	

7.3. Other administrative expenditure deriving from the action

For meetings of the management board during 2004.

Budget line (number and heading)	Amount €	Method of calculation
1801021102 – Meetings Meetings of the management board	19.200	12(members) * 800 (person/day)*2 meetings/year
Total	19.200	

	343.200
I. Annual total (7.2 + 7.3) – for 2004	
II. Total cost of action	
	343.200

8. FOLLOW-UP AND EVALUATION

8.1. Follow-up arrangements

The monitoring of the Agency will be carried out on the basis of the annual activity report adopted by the Management Board for the previous year and the work programme for the coming year, which will both forwarded to the Commission, the Council and the European Parliament.

8.2. Arrangements and schedule for the planned evaluation

Within three years from the date of the Agency having taken up its responsibilities, and every five years thereafter, the Management Board shall commission an independent external evaluation on the implementation of this Regulation.

The evaluation shall examine how effectively the Agency fulfils its mission. It shall also assess the impact of the Agency and its working practices. The evaluation shall take into account the views of stakeholders, at both European and national level.

The Management Board shall receive the findings of the evaluation and issue recommendations regarding changes to this Regulation, the Agency and its working practices to the Commission, which may forward them, together with its own opinion as well as appropriate proposals, to the Council. An action plan with a timetable shall be included, if appropriate. Both the findings and the recommendations of the evaluation shall be made public.

9. ANTI-FRAUD MEASURES

Specific control measures envisaged:

9.1. For the Agency

The Executive Director will implement the Agency's budget. He/she will each year submit to the Commission, the Management Board and the Court of Auditors the detailed accounts of all revenue and expenditure from the previous financial year. In addition, the Commission's Internal Audit Service will assist in the management of the Agency's financial operations by controlling risks, monitoring compliance by providing an independent opinion on the quality of management and control systems and making recommendations in order to improve the efficiency and the effectiveness of operations and to ensure economy in the use of the Agency's resources.

The Agency will adopt its Financial Regulation following Commission Regulation No 2343/2002³⁰, after having received the agreement of the Commission and the Court of Auditors. The Agency will put in place an internal audit system similar to that introduced by the Commission in the framework of its own restructuring.

9.2. Cooperation with OLAF

The staff subject to the Commission's Staff Regulations will cooperate with OLAF to combat fraud.

9.3. For the Court of Auditors

The Court of Auditors will examine the accounts in accordance with Article 248 of the Treaty and publish an annual report on the Agency's activities.

³⁰ Framework financial regulation for the bodies referred to in art 185 of the Financial Regulation applicable to the general budget of the European Communities