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**NOTE**

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From: Presidency  
To: Permanent Representatives Committee/Mixed Committee  
Subject: Proposal for a Regulation of the European Parliament and of the Council on the European Border and Coast Guard and repealing Regulation (EC) No 2007/2004, Regulation (EC) No 863/2007 and Council Decision 2005/267/EC  
- Guidance for further work

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## I INTRODUCTION

The Permanent Representatives Committee at its meetings of 24 February and 9 March 2016 confirmed an agreement in principle on two important sets of Articles of the aforementioned proposal, with a view to fulfilling the mandate given by the European Council at its meeting of 18-19 February 2016.

After completing the technical examination of the remaining provisions of the proposal, i.e. Chapter I (Article 2); Chapter II, Section 1 (Articles 6-7); Chapter III, Sections 3-5 (Articles 50-78) and Chapter IV, (Articles 79-82), the Presidency submits to Coreper compromise suggestions, as set out in the Annex (highlighted in underline), seeking an agreement in principle on them.

It should be noted that once an agreement in principle is confirmed on all the chapters of the proposal, the Presidency intends to examine the Preamble in the light of the agreed text of the relevant Articles.

Furthermore, the Presidency's objective is to submit a consolidated compromise text of the entire draft Regulation, to the meeting of the Permanent Representatives Committee of 6 April 2016, with a view to obtaining a mandate flexible enough to open interinstitutional negotiations with the European Parliament.

## **II COMPROMISE SUGGESTIONS**

Chapter I of the proposal (Article 2) deals with the definitions of the concepts used in it. Among them, the definitions of "external borders" and of "hotspot areas" should be highlighted. The Presidency proposes what it considers to be a balanced wording, meeting the concerns expressed by delegations and ensuring as much as possible consistency between different legal acts in EU law.

Chapter II, Section 1 (Articles 6-7), concerns the name and the tasks of the new Agency. While acknowledging the wish of many delegations to keep the short name of "Frontex" for the new Agency, the Presidency did not insert an explicit wording to this effect in the relevant provisions, thus reflecting the current situation.

Chapter III, Sections 3-5 (Articles 50-78), deals with the cooperation between the future Agency and different stake holders (including with third countries), the general framework and organisation of the Agency and the financial requirements for its proper functioning. Among the important issues tackled in these provisions, emphasis should be given in particular, on: i) the envisaged facilitation of cooperation by the Agency with the Member States and the Commission in specific activities related to the Customs Area (Article 51); ii) with regard to the cooperation with third countries, the Presidency has taken on board the view expressed by a number of delegations according to which the participation of Member States in joint operations on the territory of third countries shall be only on a voluntary basis. It should also be pointed out that the joint operation in question shall be carried out on the basis of an operational plan agreed also by the Member State bordering the relevant operational area. In the same context, the compromise includes a provision on the Status Agreement that should be concluded by the EU and the third country for the deployment of the members of the teams in appropriate situations (Article 53); iii) more functions have been added in the remit of the Management Board so as to meet with the role that is envisaged for it. The Presidency also submits a balanced wording with regard to the possibility for the Management Board to set up a small-sized Executive Board to provide assistance to its work (Article 61); iv) the deletion of the provision on Supervisory Board, following a consistent request by many delegations (Article 69). Finally, Chapter IV (Articles 79-82) covers the final provisions.

### **III CONCLUSION**

In the light of the results of the meetings of the Working Party on Frontiers/Mixed Committee and the JHA Counsellors which took place on 15 March 2016, the Presidency believes that its compromise suggestions included in the Annex have a sufficient degree of support by delegations. It therefore, invites the Committee to confirm this, with a view to obtaining an agreement in principle on the draft Regulation as a whole and obtaining a mandate for the upcoming negotiations with the European Parliament.

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## **CHAPTER I**

### **EUROPEAN BORDER AND COAST GUARD**

#### *Article 2*

##### **Definitions**

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

- (1) ‘external borders’ means ‘external borders’ as defined in article 2(2) of Regulation (EC) No 562/2006 of the European Parliament and of the Council and the land and sea borders of the Member States and their airports and seaports, to which the provisions of Title II of Regulation (EC) No 562/2006 of the European Parliament and of the Council<sup>1</sup> apply;
- (2) ‘border control’ means border control as defined in point 9 of Article 2 of Regulation (EC) No 562/2006;
- (2a) ‘border guard’ means border guard as defined in point 13 of Article 2 of Regulation (EC) No 562/2006.
- (3) ‘European Border and Coast Guard Teams’ mean teams of border guards and other relevant staff from participating Member States, including border guards and other relevant staff national experts that are seconded as national experts by Member States to the Agency, to be deployed during joint operations, rapid border interventions as well as in the framework of migration management support teams;
- (4) ‘host Member State’ means a Member State in which a joint operation or a rapid border intervention, migration management support teams, a return operation or a return intervention takes place or from which it is launched;
- (5) ‘home Member State’ means the Member State of which a member of the European Border and Coast Guard Teams is a border guard or other relevant staff member;

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<sup>1</sup> Regulation (EC) No 562/2006 of the European Parliament and of the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code) (OJ L 105, 13.4.2006, p. 1).

- (6) ‘participating Member State’ means a Member State which participates in a joint operation, rapid border intervention, return operation, return intervention or migration management support teams by providing technical equipment, border guards and other relevant staff deployed as part of the European Border and Coast Guard Teams, as well as a Member States which participate in return operations or return interventions by providing technical equipment or staff, but which is not a host Member State;
- (7) ~~‘members of the European Border and Coast Guard Teams’ mean the officers of border guard services or other relevant staff of Member States other than the host Member State, including national experts and border guards from Member States seconded to the Agency, who are participating in joint operations or rapid border interventions;~~
- (8) ‘members of the teams’ mean members of the European Border and Coast Guard Teams or teams of staff involved in return-related tasks participating in return operations or return interventions;
- (9) ‘migration management support teams’ mean teams of experts which provide operational and technical reinforcement to Member States at hotspot areas and which are composed of experts deployed from Member States by the European Border and Coast Guard Agency and the European Asylum Support Office, and from Europol or other relevant Union Agencies;
- (9a) “Hotspot area” means an area *at the external border where a Member State risks facing or faces a disproportionate migratory pressure characterized by a significant increase in the number of arriving migrants, and where the host Member State, the Commission, relevant EU agencies and participating Member States cooperate with the aim of managing that a disproportionate migratory pressure characterized by a significant increase in the number of arriving migrants at the external border or the risk thereof and ensure the full registration of all arriving migrants in accordance with relevant EU and national legislation.*
- (10) ‘return’ means return as defined in point 3 of Article 3 of Directive 2008/115/EC;
- (11) ‘return decision’ means *an administrative or judicial decision or act, stating or declaring the stay of a third-country national to be illegal and imposing or stating an obligation to return a return as defined in point 4 of Article 3 of Directive 2008/115/EC;*
- (11a) ‘third country return order’ means *an administrative or judicial decision or act issued by a third country, stating or declaring the stay of a person who is a citizen of another third country to be illegal, and imposing or stating an obligation to leave;*

- (12) ‘returnee’ means an illegally staying third-country national subject to a return decision or a third country return order;
- (13) ‘return operation’ means an operation ~~to return illegally staying third country nationals~~, that is coordinated by the Agency and involves technical and operational reinforcement being provided by one or more Member States under which returnees from one or more Member States are returned either on a forced or voluntary basis through forced return or in voluntary compliance with an obligation to return;
- (14) ‘return intervention’ means an activity of the Agency providing Member States with operation to return illegally staying third country nationals providing for enhanced technical and operational assistance consisting of the deployment of European Return Intervention Teams to Member States and the organisation of return operations.
- (15) ‘Cross-border crime’ means any serious crime with a cross- border dimension committed at, along or is related to ~~the proximity of~~ the external borders;

# CHAPTER II

## EUROPEAN BORDER AND COAST GUARD AGENCY

### SECTION 1

#### TASKS OF THE EUROPEAN BORDER AND COAST GUARD AGENCY

##### *Article 6*

###### European Border and Coast Guard Agency

1. To ensure a coherent European integrated border management at all external borders, the Agency shall facilitate and render more effective the application of existing and future Union measures relating to the management of external borders, in particular the Schengen Borders Code established by Regulation (EC) No 562/2006.
2. The European Border and Coast Guard Agency ('the Agency') shall be the new name for the European Agency for the Management of Operational Cooperation at the External Borders of the Members States of the European Union established by Council Regulation (EC) No 2007/2004. The activities shall henceforth be based on this Regulation.

##### *Article 7*

###### Tasks

1. In view of contributing to an efficient, high and uniform level of border control and return, the Agency shall perform the following tasks:
  - (a) establish a monitoring and risk analysis centre with the capacity to monitor migratory flows and to carry out risk analysis as regards all aspects of integrated border management;
  - (b) carry out a vulnerability assessment including the assessment of the capacity and readiness of Member States to face threats and pressures at the external borders;
  - (c) assist Member States in circumstances requiring increased technical and operational assistance at the external borders by coordinating and organising joint operations, taking into account that some situations may involve humanitarian emergencies and rescue at sea;
  - (d) assist Member States in circumstances requiring increased technical and operational assistance at the external borders, by launching rapid border interventions at the external borders of those Member States facing specific and disproportionate pressures, taking into account that some situations may involve humanitarian emergencies and rescue at sea;

- (e) set up and deploy European Border and Coast Guard Teams, including a rapid reserve pool, that are to be deployed during joint operations and rapid border interventions and in the framework of the migration management support teams;
- (f) set up a technical equipment pool to be deployed in joint operations, rapid border interventions and in the framework of migration management support teams, as well as in return operations and return interventions;
- (g) deploy European Border and Coast Guard Teams and technical equipment to provide assistance in screening, debriefing, identification and fingerprinting in the framework of the migration management support teams at hotspot areas;
- (h) support the development of technical standards for equipment, especially for tactical level command, control and communication as well as technical surveillance to ensure interoperability at Union and national level;
- (i) deploy the necessary equipment and border guards and other relevant staff of for the rapid reserve pool for the practical execution of the measures needed to be taken in a situation requiring urgent action at the external borders;
- (j) assist Member States in circumstances requiring increased technical assistance and operational assistance for implementing the obligation to return illegally staying third-country nationals, including through the coordination or organisation of return operations;
- (k) set up pools of forced return monitors, forced return escorts and return specialists;
- (l) set up and deploy European Return Intervention Teams during return interventions;
- (m) assist Member States on training of national border guards, other relevant staff and experts on return, including the establishment of common training standards;
- (n) participate in the development and management of research and innovation activities relevant for the control and surveillance of external borders, including the use of advanced surveillance technology such as remotely piloted aircraft systems and develop pilot projects regarding matters covered by this Regulation;

- (o) develop and operate, in accordance with Regulation (EC) No 45/2001<sup>1</sup> and Framework Decision 2008/977/JHA, information systems that enable swift and reliable exchanges of information regarding emerging risks at the management of the external borders, irregular illegal immigration and return, in close cooperation with the Commission, Union agencies, bodies and offices as well as the European Migration Network established by Council Decision 2008/381/EC;<sup>2</sup>
- (p) provide the necessary assistance for the development and operation of a European border surveillance system and, as appropriate, to the development of a common information-sharing environment, including interoperability of systems, in particular by developing, maintaining and coordinating the Eurosur framework in accordance with Regulation (EU) No 1052/2013;
- (q) cooperate with the European Fisheries Control Agency and the European Maritime Safety Agency to support the national authorities carrying out coast guard functions by providing services, information, equipment and training, as well as by coordinating multipurpose operations;
- (r) assist Member States and third countries in the context of operational cooperation between them in the fields of external border management and return.
2. Member States may continue cooperation at an operational level with other Member States and/or third countries at external borders, including military operations on a law enforcement mission and in the field of return, where such cooperation is compatible complements with the action of the Agency. Member States shall refrain from any activity which could jeopardise the functioning of the Agency or the attainment of its objectives.
- Member States shall report to the Agency on that operational cooperation with other Member States and/or third countries at the external borders and in the field of return. The Executive Director of the Agency ('the Executive Director') shall inform the Management Board of the Agency ('the Management Board') on those matters on a regular basis and at least once a year.
3. The Agency may engage in communication activities on its own initiative in the fields within its mandate. Communication activities shall not be detrimental to the tasks referred to in paragraph 1 and shall be carried out in accordance with relevant communication and dissemination plans adopted by the Management Board.

<sup>1</sup> Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (OJ L 8, 12.1.2001, p. 1).

<sup>2</sup> Council Decision 2008/381/EC of 14 May 2008 establishing a European Migration Network (OJ L 131, 21.5.2008, p. 7).

## SECTION 3

### COOPERATION BY THE AGENCY

#### *Article 50*

##### Cooperation with Ireland and the United Kingdom

1. The Agency shall facilitate operational cooperation of the Member States with Ireland and the United Kingdom in specific activities.
2. Support to be provided by the Agency pursuant to Article 7(1)(j), (k) and (l) shall cover the organisation of return operations of Member States in which Ireland or the United Kingdom, or both, also participate.
3. The application of this Regulation to the borders of Gibraltar shall be suspended until the date on which an agreement is reached on the scope of the measures concerning the crossing by persons of the external borders.

#### *Article 51*

##### Cooperation with Union institutions, agencies, bodies, offices and international organisations

1. The Agency shall cooperate with the Commission, other Union institutions, the European External Action Service, Europol, the European Asylum Support Office, the European Union Agency for Fundamental Rights, Eurojust, the European Union Satellite Centre, the European Maritime Safety Agency and the European Fisheries Control Agency as well as other Union, agencies, bodies, offices in matters covered by this Regulation, and in particular with the objectives of preventing and combating ~~irregular~~ illegal immigration and cross-border crime including the facilitation of irregular immigration, trafficking in human being and terrorism.

To that end, the Agency may cooperate with international organisations competent in matters covered by this Regulation.

2. Such cooperation shall take place within the framework of working arrangements concluded with those bodies. Such arrangements shall have received the Commission's prior approval. In every case the Agency shall inform the European Parliament of any such arrangements.

3. The Agency shall cooperate with the Commission, and where relevant with Member States, in activities relating to this regulation, and, although outside the scope of this Regulation, relating to the customs area including risk management, where these activities may support each other. This cooperation shall be without prejudice to the existing competences of the Commission and of the Member States.
4. The Union institutions, agencies, bodies, offices and international organisations referred to in paragraph 1, shall use information received by the Agency only within the limits of their competences and in compliance with fundamental rights, including data protection requirements. Onward transmission or other communication of personal data processed by the Agency to other Union agencies or bodies shall be subject to specific working arrangements regarding the exchange of personal data and subject to the prior approval of the European Data Protection Supervisor. As regards the handling of classified information, those arrangements shall provide that the Union institution, body, office, agency or international organisation concerned shall comply with security rules and standards equivalent to those applied by the Agency.
5. The Agency may also, with the agreement of the Member States concerned, invite observers of Union institutions, agencies, bodies, offices or international organisations to participate in its activities in particular, joint operations and pilot projects, risk analysis and training, to the extent that their presence is in accordance with the objectives of those activities, may contribute to the improvement of cooperation and the exchange of best practices, and does not affect the overall safety and security of those activities. The participation of those observers in risk analysis and training may take place only with the agreement of the Member States concerned. As regards joint operations and pilot projects the participation of observers is subject to agreement of the host Member State. Detailed rules on the participation of observers shall be included in the operational plan. Those observers shall receive the appropriate training from the Agency prior to their participation.

### *Article 53*

#### Cooperation with third countries

1. In matters covered by its activities and to the extent required for the fulfilment of its tasks, the Agency shall facilitate and encourage operational cooperation between Member States and third countries, within the framework of the external relations policy of the Union, including with regard to the protection of fundamental rights. The Agency and the Member States shall comply with norms and standards at least equivalent to those set by Union legislation also when cooperation with third countries takes place on the territory of those countries. The establishment of cooperation with third countries shall serve to promote European border management and return standards.

2. The Agency may cooperate with the authorities of third countries competent in matters covered by this Regulation with the support of and in coordination with Union delegations, as well as within the framework of working arrangements concluded with those authorities in accordance with Union law and policy. Those working arrangements shall be related to the management of operational cooperation. Such arrangements shall have received the Commission's prior approval.
3. In circumstances requiring increased technical and operational assistance, the Agency may coordinate operational cooperation between Member States and third countries in the field of management of external borders, and The Agency it shall have the possibility of carrying out joint operations at the external borders involving one or more Member States and a third country neighbouring at least one of those Member States, subject to the agreement of that neighbouring third country, including on the territory of that third country. This operation shall be carried out on the basis of an operational plan agreed also by the Member State bordering the operational area. The participation of Member States in joint operations on the territory of third countries, shall be on voluntary basis. The Commission shall be informed of such activities.
  - 3a. A Status Agreement shall be concluded by the EU with the third country for the deployment of the members of the teams in joint operations actions where members of the teams will conduct executive powers, or in other actions operations when necessary. This agreement shall cover all aspects that are necessary for carrying out the actions joint operation, in particular the description of the scope of the operation, civil and criminal liability, tasks and powers of the members of the teams. The agreement shall ensure the full respect of fundamental rights during these operations.
  - 3b. The Commission, Agency, shall draw up a model Status Agreement for joint operations on the territory of third countries. The management board shall approve the model Status Agreement.
4. The Agency shall cooperate with the competent authorities of third countries on return, including on the acquisition of travel documents.
5. The Agency may also, with the agreement of the Member States concerned invite observers from third countries to participate in its activities at the external borders referred to in Article 13, return operations referred to in Article 27, return interventions referred to in Article 32 and training referred to in Article 35, to the extent that their presence is in accordance with the objectives of those activities, may contribute to improving cooperation and the exchange of best practices, and does not affect the overall safety of those activities. The participation of those observers may take place only with the agreement of the Member States concerned regarding the activities referred to in Articles 13, 27 and 35 and only with the agreement of the host Member State regarding those referred to in Article 13 and 32. Detailed rules on the participation of observers shall be included in the operational plan. Those observers shall receive the appropriate training from the Agency prior to their participation.

6. The Agency shall participate in the implementation of international agreements concluded by the Union with third countries, within the framework of the external relations policy of the Union, and regarding matters covered by this Regulation.
7. The Agency may benefit from Union funding in accordance with the provisions of the relevant instruments supporting the external relations policy of the Union. It may launch and finance technical assistance projects in third countries regarding matters covered by this Regulation.
8. When concluding bilateral agreements with third countries Member States may, in agreement with the Agency, include provisions concerning the role and competence of the Agency in accordance with this Regulation, in particular regarding the exercise of executive powers by members of the European Border ~~and~~ Coast Guard Teams deployed by the Agency during the joint operations, pilot projects, rapid border interventions, return operations or return interventions. The Member States shall notify the Commission of any such provisions.
9. The Agency shall inform the European Parliament of the activities referred to in paragraphs 2 and 3.

*Article 54*

Liaison officers in third countries

1. The Agency may deploy experts of its own staff as liaison officers, who should enjoy the highest possible protection to carry out their duties, in third countries. They shall form part of the local or regional cooperation networks of immigration liaison officers and security experts of the Union and of the Member States, including the network set up pursuant to Council Regulation (EC) No 377/2004.<sup>1</sup>
2. Within the framework of the external relations policy of the Union, priority for deployment of liaison officers shall be given to those third countries which, on the basis of risk analysis, constitute a country of origin or transit regarding irregular immigration. On a reciprocal basis the Agency may receive liaison officers posted by those third countries. The Management Board shall adopt, on a proposal of the Executive Director the list of priorities on a yearly basis. The deployment of liaison officers shall be approved by the Management Board.

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<sup>1</sup> Council Regulation (EC) No 377/2004 of 19 February 2004 on the creation of an immigration liaison officers network (OJ L 64, 2.3.2004, p. 1).

3. The tasks of the Agency's liaison officers shall include, in compliance with Union law and in accordance with fundamental rights, establishing and maintaining contacts with the competent authorities of the third country to which they are assigned with a view to contributing to the prevention of and fight against irregular immigration and the return of illegally staying third-country nationals. Those liaison officers shall coordinate closely with Union delegations.
4. The decision to deploy liaison officers to third countries shall be subject to receiving a prior opinion of the Commission, and the European Parliament shall be fully informed of those activities as soon as possible.

## SECTION 4

### GENERAL FRAMEWORK AND ORGANISATION OF THE AGENCY

#### *Article 55*

##### Legal status and location

1. The Agency shall be a body of the Union. It shall have legal personality.
2. 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.
3. The Agency shall be independent in relation to implementing its operational and technical matters mandate.
4. It shall be represented by its Executive Director.
5. The seat of the Agency shall be Warsaw, Poland, subject to the implementation of Article 56.

#### *Article 56*

##### Headquarters Agreement

1. The necessary arrangements concerning the accommodation to be provided for the Agency in the Member State in which the Agency has its seat and the facilities to be made available by that Member State, as well as the specific rules applicable to the Executive Director, the Deputy Executive Director, the members of the Management Board, the staff of the Agency and members of their families, in that Member State shall be laid down in a Headquarters Agreement between the Agency and the Member State in which the Agency has its seat.
2. The Headquarters Agreement shall be concluded after obtaining the approval of the Management Board and no later than three months after entry into force of this Regulation.
3. The Member State in which the Agency has its seat shall provide the best possible conditions to ensure proper functioning of the Agency, including multilingual, European-oriented schooling and appropriate transport connections.

*Article 57*

Staff

1. The Staff Regulations of Officials of the European Union and the Conditions of Employment of Other Servants of the Union and the rules adopted in agreement between the institutions of the Union for giving effect to those Staff Regulations and the Conditions of Employment of Other Servants of the Union shall apply to the Agency's staff.
2. For the purpose of implementing Article 11, 21 and 32(6) 31(2) only a staff member of the Agency subject to the Staff Regulations of Officials of the European Union or to Title II of the Conditions of Employment of Other Servants of the European Union may be designated as a coordinating officer or a liaison officer. For the purpose of implementing Article 19(8), ~~only seconded border guards or other relevant staff national experts or border guards seconded by a Member State to the Agency~~ may be designated for attachment to the European Border and Coast Guard Teams. The Agency shall designate those national experts who shall be attached to the European Border and Coast Guard Teams in accordance with that Article.
3. The Management Board shall adopt the necessary implementing measures in agreement with the Commission pursuant to Article 110 of the Staff Regulations of Officials of the European Union.
4. The Management Board may adopt provisions to allow ~~national experts and border guards or other relevant staff from Member States to be seconded to the Agency~~. Those provisions shall take into account the requirements of Article 19(8), in particular the fact that the seconded ~~national experts or border guards or other relevant staff~~ are considered as members of the teams and have the tasks and powers provided for in Article 39. They shall include provisions on the conditions of deployment.

*Article 58*

Privileges and immunities

The Protocol on the Privileges and Immunities of the European Union shall apply to the Agency and its staff.

*Article 59*

**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 Union shall have jurisdiction to give judgment 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 staff 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 of Officials of the European Union and Conditions of Employment of Other Servants of the Union applicable to them.

*Article 60*

**Administrative and management structure of the Agency**

The administrative and management structure of the Agency shall comprise:

- (a) a Management Board;
- (b) an Executive Director;
- (c) a ~~Supervisory Board~~;
- (d) a Consultative Forum; and
- (e) a Fundamental Rights Officer.

## *Article 61*

### Functions of the Management Board

1. The Management Board shall:
  - (a) appoint the Executive Director on a proposal from the Commission in accordance with Article 68;
  - (b) ~~appoint the Deputy Executive Director on the proposal of the Executive Director in accordance with Article 68; appoint the members of the Supervisory Board in accordance with Article 69(2);~~
  - (c) ~~Adopt decisions on conducting the vulnerability assessment in accordance with Article 12 (1, 2, 8). The decisions setting out corrective measures in accordance with Article 12(68) shall be adopted by a majority of two-third of the members entitled to vote;~~
  - (c1) ~~Adopt decisions on the establishment of a common integrated risk analyses model in accordance with Article 10 (1);~~
  - (c2) ~~Adopt decisions on the nature of the deployment of liaison officers in Member States in accordance with Article 11 (2a);~~
  - (c3) ~~adopt an operational and technical strategy for the European integrated border management in accordance with article 3(2);~~
  - (c4) ~~adopt a decision on the profiles and the overall number of border guards or other relevant staff to be made available for the European Border Guard teams, in accordance with article 19(2);~~
  - (c5) ~~adopt a decision on the profiles and the minimum number of border guards that correspond to these profiles to be made available for the Rapid reserve pool of European Border Guard Teams, in accordance with article 19(4) by a three-quarter majority;~~
  - (d) adopt a consolidated annual activity report of the Agency for the previous year and forward it by 1 July at the latest to the European Parliament, the Council, the Commission and the Court of Auditors; the consolidated annual activity report shall be made public;
  - (e) before 30 November each year, and after taking into account the opinion of the Commission, adopt, by a majority of two-thirds of the members entitled to vote, a single programming document containing the Agency's multiannual programming and its work programme for the following year and forward it to the European Parliament, the Council and the Commission;

- (f) establish procedures for taking decisions related to the operational and technical tasks of the Agency by the Executive Director;
- (g) adopt, by a majority of two-thirds of the members entitled to vote, the annual budget of the Agency and exercise other functions in respect of the Agency's budget pursuant to Section 5 of this Chapter;
- (h) exercise disciplinary authority over the Executive Director and over the Deputy Director, in agreement with the Executive Director;
- (i) establish its Rules of Procedure;
- (j) establish the organisational structure of the Agency and adopt the Agency's staff policy, in particular the multiannual staff policy plan. In accordance with the relevant provisions of the Commission Regulation (EC, Euratom) No 2343/2002<sup>1</sup> the multiannual staff policy plan shall be submitted to the Commission and the budgetary authority after receiving a favourable opinion of the Commission;
- (k) adopt an anti-fraud strategy, proportionate to the risk of fraud, taking into account the costs and benefits of the measures to be implemented;
- (l) adopt internal rules for the prevention and management of conflicts of interest in respect of its members;
- (m) exercise, in accordance with paragraph 7, with respect to the staff of the Agency, the powers conferred by the Staff Regulations of Officials of the European Union on the Appointing Authority and by the Conditions of Employment of Other Servants of the Union on the Authority Empowered to Conclude a Contract of Employment ('the Appointing Authority powers');
- (n) adopt appropriate implementing rules for giving effect to the Staff Regulations of Officials of the European Union and the Conditions of Employment of Other Servants of the Union in accordance with Article 110 of the Staff Regulations;
- (o) ensure adequate follow-up to findings and recommendations stemming from the internal or external audit reports and evaluations, as well as from investigations of the European Anti-fraud Office (OLAF);
- (p) adopt and regularly update the communication and dissemination plans referred to in Article 7(3) based on an analysis of needs;

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<sup>1</sup>

Commission Regulation (EC, Euratom) No 2343/2002 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 Communities (OJ L 357, 31.12.2002, p.72).

- (q) appoint an Accounting Officer, subject to the Staff Regulations of Officials of the European Union and the Conditions of Employment of Other Servants of the Union, who shall be totally independent in the performance of his or her duties;
- (r) appoint the Fundamental Rights Officer in accordance with Article 71(1);
- (s) approves the working arrangements with third countries;
2. Proposals for decisions on specific activities of the Agency to be carried out at, or in the immediate vicinity of, the external border of any particular Member State shall require a vote in favour of their adoption by the Member of the Management Board representing that Member State.
3. The Management Board may advise the Executive Director on any matter ~~strictly~~ related to the development of operational management of the external borders and return, including activities related to research.
4. Should Ireland and/or the United Kingdom request to participate in specific activities, the Management Board shall decide thereon.
- The Management Board shall take its decision on a case-by-case basis by an absolute majority of its members with a right to vote. In its decision, the Management Board shall consider if the participation of Ireland and/or the United Kingdom contributes to the achievement of the activity in question. The decision shall set out the financial contribution of Ireland and/or the United Kingdom to the activity for which a request for participation has been made.
5. The Management Board shall forward annually to the budgetary authority any information relevant to the outcome of the evaluation procedures conducted by the Agency.
6. The Management Board may establish a small-sized Executive Board ~~composed of the Chairperson of the Management Board, one representative of the Commission and three members of the Management Board~~, to assist it and the Executive Director with regard to the preparation of the decisions, programmes and activities to be adopted by the Management Board and when necessary, because of urgency, to take certain provisional decisions on behalf of the Management Board, excluding decisions on which a reinforced majority is needed in the Management Board.

7. The Management Board shall adopt, in accordance with Article 110 of the Staff Regulations, a decision based on Article 2(1) of the Staff Regulations of Officials of the European Union and on Article 6 of the Conditions of Employment of Other Servants of the Union, delegating relevant Appointing Authority powers to the Executive Director and defining the conditions under which this delegation of powers can be suspended. The Executive Director shall be authorised to sub-delegate those powers.

Where exceptional circumstances so require, the Management Board may by way of a decision temporarily suspend the delegation of the Appointing Authority powers to the Executive Director and those sub-delegated by the latter and exercise them itself or delegate them to one of its members or to a staff member other than the Executive Director.

### *Article 62*

#### Composition of the Management Board

1. Without prejudice to paragraph 3, the Management Board shall be composed of one representative of each Member State and two representatives of the Commission, all with voting rights. To this effect, each Member State shall appoint a member of the Management Board as well as an alternate who will represent the member in his or her absence. The Commission shall appoint two members and their alternates. The duration of the terms of office shall be four years. The terms of office shall be extendable.
2. The Management Board members shall be appointed on the basis of their degree of high level relevant experience and expertise in the field of operational cooperation on border management and return, taking into account relevant managerial, administrative and budgetary skills. The parties represented in the Management Board shall make efforts to limit turnover of their representatives, in order to ensure continuity of the board's work. They shall aim to achieve a balanced representation between men and women on the Management Board.
3. Countries associated with the implementation, application and development of the Schengen *acquis* shall participate in the Agency. They shall have one representative and one alternate each in the Management Board. Under the relevant provisions of their association agreements, arrangements have been developed that specify the nature and extent of, and the detailed rules for, the participation by those countries in the work of the Agency, including provisions on financial contributions and staff.

## *Article 63*

### Multiannual programming and annual work programmes

1. The Management Board shall, by 30 November each year, adopt a programming document containing the Agency's multiannual programming and annual programming for the following year, based on a draft put forward by the Executive Director, taking into account the opinion of the Commission and, as regards the multiannual programming, after having consulted the European Parliament. The Management Board shall forward that document to the European Parliament, the Council and the Commission.
2. The document referred to in paragraph 1 shall become definitive after the final adoption of the general budget and, where necessary, shall be adjusted accordingly.
3. The multiannual programming shall set out overall strategic programming in the medium and long term, including the objectives, expected results and performance indicators, as well as resource planning, including the multiannual budget and staff. The multiannual programming shall set the strategic areas of interventions and explain what needs to be done to achieve the objectives. It shall include a strategy for relations with third countries and international organisations, as well as the actions linked to that strategy.
4. The multiannual programming shall be implemented by means of annual work programmes and shall, where appropriate, be updated following the outcome of the evaluation referred to in Article 80. The conclusion of those evaluations shall also be reflected, where appropriate, in the annual work programme for the following year.
5. The annual work programme shall contain a description of the activities to be financed comprising detailed objectives and expected results including performance indicators. It shall also contain an indication of the financial and human resources allocated to each activity, in accordance with the principles of activity-based budgeting and management. The annual work programme shall be consistent with the multiannual programming. It shall clearly indicate tasks that have been added, changed or deleted compared to the previous financial year.
6. The annual work programme shall be adopted according to the Union legislative programme in relevant areas of the management of external borders and returns;
7. Where, after adoption of an annual work programme, a new task is assigned to the Agency, the Management Board shall amend the annual work programme.
8. Any substantial amendment to the annual work programme shall be adopted by the same procedure as that applicable to adoption of the initial annual work programme. The Management Board may delegate the power to make non-substantial amendments to the annual work programme to the Executive Director.

## *Article 64*

### Chairmanship of the Management Board

1. The Management Board shall elect a Chairperson and a Deputy Chairperson from among its members with voting rights. The Chairperson and the Deputy Chairperson shall be elected by a majority of two-thirds of the members of the Management Boards with voting rights. The Deputy Chairperson shall *ex officio* replace the Chairperson in the event of his or her being prevented from attending to his or 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 four years. These terms of office shall be extendable once.

## *Article 65*

### 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, without the right to vote.
3. The Management Board shall hold at least two ordinary meetings a year. In addition, it shall meet at the initiative of the Chairperson, at the request of the Commission, or at the request of at least one third of its members.
4. Ireland and the United Kingdom shall be invited to attend the meetings of the Management Board.
5. The Management Board may invite a representative of the relevant Union institutions, bodies, offices and agencies External Action Service.
6. The Management Board may invite, in accordance with its rules of procedure, any other person whose opinion may be of interest to attend its meetings as an observer.
7. The members of the Management Board may, subject to the provisions of its Rules of Procedure, be assisted by advisers or experts.
8. The secretariat for the Management Board shall be provided by the Agency.

## *Article 66*

### Voting

1. Without prejudice to Article 19(4), 61(1)(c), (e) and (g), Article 64(1) and Article 68(2) and (4), the Management Board shall take its decisions by an absolute majority of its members with a right to vote.
2. Each member shall have one vote. ~~The Executive Director shall not vote.~~ In the absence of a member, his or her alternate shall be entitled to exercise his or her right to vote. The Executive Director shall not 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.
4. Countries associated with the implementation, application and development of the Schengen *acquis* have limited voting rights in accordance with the respective arrangements. In order to allow the associated countries to exercise their right to vote, the Agency shall detail the agenda identifying the points for which a limited voting right has been granted.

## *Article 67*

### 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 or 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 to report on the carrying out of his or her tasks, in particular on the implementation and monitoring of the Fundamental Rights Strategy, the consolidated annual activity report of the Agency for the previous year, the work programme for the following year and the Agency's multiannual programming.
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 day-to-day administration and functioning of the Agency in accordance with the provisions of this Regulation;
- (c) to prepare each year the programming document and to submit it to the Management Board after consulting the Commission;
- (d) to prepare each year the consolidated annual activity report on the Agency's activities and submit it to the Management Board;
- (e) to draw up a draft statement of estimates of the revenues and expenditure of the Agency pursuant to Article 75, and implement the budget pursuant to Article 76;
- (f) to delegate his or 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 61(1)(i);
- (g) to adopt a recommendation decision on corrective measures in accordance with Article 12(57), including to propose to Member States to initiate and carry out joint operations, rapid border interventions or other action referred to in Article 13(2);
- (h) to evaluate, approve and coordinate proposals made by Member States for joint operations or rapid border interventions in accordance with Article 14(3);
- (h1) to evaluate, approve and coordinate proposals made by Member States for joint return operations and return interventions in accordance with Article 27 and 32;
- (i) to ensure the implementation of the operational plans referred to in Articles 15, 16 and 32(4);
- (j) to assess the request for assistance of a Member State for migration management support teams and the assessment of its needs, in coordination with relevant Union Agencies in accordance with Article 17(2);
- (k) to ensure the implementation of the Council Commission decision referred to in Article 18;
- (l) to withdraw financing of a joint operation, migration management support teams or rapid border intervention or to suspend or terminate such operations in accordance with Article 24;
- (m) to evaluate the results of joint operations, migration management support teams, return operations, return intervention and rapid border interventions in accordance with Article 25;

- (n) to identify the minimum number of technical equipment in accordance with its needs, notably in order to be able to carry out joint operations, migration management support teams, return interventions, return operations and rapid border interventions, in accordance with Article 38(2);
- (o) to prepare an action plan following-up on the conclusions of internal or external audit reports and evaluations, as well as investigations by the European Anti-fraud Office (OLAF) and reporting on progress twice a year to the Commission and regularly to the Management Board;
- (p) to protect the financial interests of the Union by applying preventive measures against fraud, corruption and any other illegal activities, by effective checks and, if irregularities are detected, by recovering amounts wrongly paid and, where appropriate, by imposing effective, proportionate and dissuasive administrative and financial penalties;
- (q) to prepare an anti-fraud strategy for the Agency and present it to the Management Board for approval.
4. The Executive Director shall be accountable for his activities to the Management Board.
  5. The Executive Director shall be the legal representative of the Agency.

#### *Article 68*

##### Appointment of the Executive Director and the Deputy Executive Director

1. The Commission shall propose at least two candidates for the post of the Executive Director and the Deputy Executive Director based on a list following publication of the post in the Official Journal of the European Union and other press or internet sites as appropriate.
2. The Executive Director shall be appointed by the Management Board on the grounds of merit and documented high-level administrative and management skills, as well as relevant senior professional experience in the field of management of the external borders and return. 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 lie with the Management Board, acting on a proposal from the Commission, 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 or her place.

4. The Deputy Executive Director shall be appointed by the Management Board on the grounds of merit and documented appropriate administrative and management skills, as well as relevant professional experience in the field of management of the external borders and return on the proposal of the Commission, after having consulted the Executive Director. The Executive Director shall propose at least two candidates for the post of the Deputy 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 term of office of the Executive Director shall be five years. By the end of that period, the Commission shall undertake an assessment that takes into account an evaluation of the Executive Director's performance and the Agency's future tasks and challenges.
6. The Management Board, acting on a proposal from the Commission that takes into account the assessment referred to in paragraph 5, may extend the term of office of the Executive Director once, for no more than five years.
7. The term of the office of the Deputy Executive Director shall be five years. It may be extended by the Management Board once for another period of up to five years.

*Article 69*

**Supervisory Board**

1. The Supervisory Board shall advise the Executive Director:
- (a) ~~on the recommendations to be made by the Executive Director to a Member State concerned to initiate and carry out joint operations or rapid border interventions in accordance with Article 14(4);~~
- (b) ~~on the decisions to be taken by the Executive Director to Member States based on the outcome of the vulnerability assessment carried out by the Agency in accordance with Article 12;~~
- (c) ~~on the measures needed to be taken for the practical execution of the Commission decision related to a situation requiring urgent action at the external borders, including the technical equipment and staff needed to meet the objectives of that decision in accordance with Article 18(3).~~
2. The Supervisory Board shall be composed of the Deputy Executive Director, four other senior officials of the Agency to be appointed by the Management Board and one of the representatives of the Commission to the Management Board. The Supervisory Board shall be chaired by the Deputy Executive Director.
3. The Supervisory Board shall report to the Management Board.

*Article 70*

Consultative Forum

1. A Consultative Forum shall be established by the Agency to assist the Executive Director and the Management Board in fundamental rights matters.
2. The Agency shall invite the European Asylum Support Office, the European Union Agency for Fundamental Rights, the United Nations High Commissioner for Refugees and other relevant organisations to participate in the Consultative Forum. On a proposal by the Executive Director, the Management Board shall decide on the composition and the working methods of the Consultative Forum and the modalities of the transmission of information to the Consultative Forum.
3. The Consultative Forum shall be consulted on the further development and implementation of the Fundamental Rights Strategy, Codes of Conduct and common core curricula.
4. The Consultative Forum shall prepare an annual report of its activities. That report shall be made publicly available.
5. Without prejudice to the tasks of the Fundamental Rights Officer, The Consultative Forum shall have access to all information concerning the respect for fundamental rights, including by carrying out on spot visits to joint operations or rapid border interventions subject to the agreement of the host Member State.

*Article 71*

Fundamental Rights Officer

1. A Fundamental Rights Officer shall be designated by the Management Board and shall have the necessary qualifications and experience in the field of fundamental rights.
2. The Fundamental Rights Officer shall be independent in the performance of his or her duties as a Fundamental Rights Officer, he or she shall report directly to the Management Board and cooperate with the Consultative Forum. The Fundamental Rights Officer shall report on a regular basis and as such contribute to the mechanism for monitoring fundamental rights.
3. The Fundamental Rights Officer shall be consulted on the operational plans drawn up in accordance with Articles 15, 16 and 32(4) and shall have access to all information concerning respect for fundamental rights, in relation to all the activities of the Agency.

## *Article 72*

### Complaint Mechanism

1. The Agency, in cooperation with the Fundamental Rights Officer, shall take the necessary measures to set up a complaint mechanism in accordance with this Article to monitor and ensure the respect for fundamental rights in all the activities of the Agency.
2. Any person who is directly affected by the actions of staff involved in a joint operation, pilot project, rapid border intervention, migration management support teams, return operation or return intervention, and who considers him or herself to have been the subject of a breach of his or her fundamental rights due to those actions, or any third parties intervening on behalf of such a person, may submit a complaint, in writing, to the Agency.
3. Only substantiated complaints involving concrete fundamental rights violations shall be admissible. Complaints which are anonymous, malicious, frivolous, vexatious, hypothetical or inaccurate shall be excluded from the complaint mechanism.
4. The Fundamental Rights Officer shall be responsible for handling complaints received by the Agency in accordance with the right to good administration. For this purpose, the Fundamental Rights Officer shall review the admissibility of a complaint, register admissible complaints, forward all registered complaints to the Executive Director, forward complaints concerning members of the teams border guards to the home Member State and register the follow-up by the Agency or that Member State.
5. In case of a registered complaint concerning a staff member of the Agency, the Executive Director shall ensure appropriate follow-up, including disciplinary measures as necessary. The Executive Director shall report back to the Fundamental Rights Officer as to the findings and follow-up given by the Agency to a complaint.
6. In case of a registered complaint concerning a border guard of a host Member State or a member of the teams, including seconded members of the teams or seconded national experts, the home Member State shall ensure appropriate follow-up, including disciplinary measures as necessary or other measures in accordance with national law. The relevant Member State shall report back to the Fundamental Rights Officer as to the findings and follow-up to a complaint.
7. The Fundamental Rights Officer shall report to the Executive Director and to the Management Board as to the findings and follow-up given to complaints by the Agency and the Member States.
8. In accordance with the right to good administration, if a complaint is admissible, complainants shall be informed that a complaint has been registered, that an assessment has been initiated and that a response may be expected as soon as it becomes available. If a complaint is not admissible, complainants shall be informed of the reasons and provided with further options for addressing their concerns.

9. The Fundamental Rights Officer shall, after consulting the Consultative Forum, draw up a standardized complaint form requiring detailed and specific information concerning the alleged breach of fundamental rights. The Fundamental Rights Officer shall submit that form to the Executive Director and to the Management Board.

The Agency shall ensure that the standardized complaint form is available in most common languages and that it shall be made available on the Agency's website and in hardcopy during all activities of the Agency. Complaints shall be considered by the Fundamental Rights Officer even when they are not submitted in the standardized complaint form.

10. Any personal data contained in a complaint shall be handled and processed by the Agency ~~and including~~ the Fundamental Rights Officer, in accordance with Regulation (EC) No 45/2001 and by Member States in accordance with Directive 95/46/EC and Council Framework Decision 2008/977/JHA.

The submission of the complaint is understood as the complainant consenting to the processing of his or her personal data in the meaning of point (d) of Article 5 of Regulation (EC) No 45/2001 by the Agency and the Fundamental Rights Officer.

In order to safeguard the interest of the complainants, complaints shall be dealt with appropriate confidentially in accordance with national and EU law unless the complainant waives his or her right to confidentiality. For complainants who waive their right to confidentiality, it is understood that he or she consents to the Fundamental Rights Officer or the Agency disclosing his or her identity in relation to the matter under complaint.

## *Article 73*

### Language arrangements

1. The provisions laid down in Regulation No 1<sup>1</sup> shall apply to the Agency.
2. Without prejudice to decisions taken on the basis of Article 342 TFEU, the consolidated annual activity report and the work programme referred to in Article 61(1)(d) and (e), shall be produced in all official languages of the Union.
3. The translation services required for the functioning of the Agency shall be provided by the Translation Centre for the bodies of the European Union.

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<sup>1</sup> Regulation No 1 determining the languages to be used by the European Economic Community of 15 April 1958 (OJ 17, 6.10.58, p. 385, English special edition: Series I Chapter 1952-1958 p. 59).

*Article 74*

Transparency and communication

1. 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 make public the consolidated annual activity report referred to in Article 61(1)(d) and ensure in particular that 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 or herself in writing to the Agency in any of the official languages of the Union. He or she shall have 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 Union, under the conditions laid down in Articles 228 and 263 TFEU respectively.

## SECTION 5

### FINANCIAL REQUIREMENTS

#### *Article 75*

##### Budget

1. The revenue of the Agency shall consist, without prejudice to other types of income, of:
  - (a) a subsidy from the Union entered in the general budget of the European Union (Commission section);
  - (b) a contribution from the countries associated with the implementation, application and development of the Schengen *acquis* as established in the respective arrangements that specify the financial contribution;
  - (c) Union funding in the form of delegation agreements or ad-hoc grants in accordance with its financial rules referred to in Article 78 and with the provisions of the relevant instruments supporting the policies of the Union;
  - (d) fees for services provided;
  - (e) 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 a draft statement of estimates of the Agency's revenue and expenditure for the following financial year, including an establishment plan, and shall forward it to the Management Board.
4. Revenue and expenditure shall be in balance.
5. The Management Board shall, on the basis of the draft statement of estimates drawn up by the Executive Director, adopt a provisional draft estimate of the Agency's revenue and expenditure, including the provisional establishment plan and forward them by 31 January to the Commission.
6. The Management Board shall send the final draft estimates of the Agency's revenue and expenditure including the draft establishment plan accompanied by the preliminary work programme by 31 March to the Commission.
7. 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.

8. On the basis of the estimate, the Commission shall enter in the 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 Articles 313 and 314 TFEU.
9. The budgetary authority shall authorise the appropriations for the subsidy to the Agency.  
The budgetary authority shall adopt the establishment plan for the Agency.
10. The Management Board adopts the Agency's budget. It shall become final following the final adoption of the general budget of the European Union. Where appropriate, it shall be adjusted accordingly.
11. Any modification to the budget, including the establishment plan, shall follow the same procedure.
12. For any building project likely to have significant implications for the budget the Agency the provisions of Commission Delegated Regulation (EU) No 1271/2013<sup>1</sup> shall apply.
13. In the view of financing the deployment of rapid border interventions and return interventions, the budget of the Agency adopted by the Management Board shall include a financial operational reserve amounting at least to 4% of the allocation foreseen for the operational activities. The reserve should be maintained throughout the year.

#### *Article 76*

##### Implementation and control of the budget

1. The Executive Director shall implement the Agency's budget.
2. By 1 March at the following financial year (year N + 1), the Agency's accounting officer shall communicate the provisional accounts for the financial year (year N) to the Commission's accounting officer and to the Court of Auditors. The Commission's accounting officer shall consolidate the provisional accounts of the institutions and decentralised bodies in accordance with Article 147 of Regulation (EC, Euratom) No 966/2012 of the European Parliament and of the Council.<sup>2</sup>

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<sup>1</sup> Commission Delegated Regulation (EU) No 1271/2013 of 30 September 2013 on the framework financial regulation for the bodies referred to in Article 208 of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council (OJ L 328, 7.12.2013, p. 42).

<sup>2</sup> Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002 (OJ L 298 of 26.10.2012).

3. The Agency shall send a report on the budgetary and financial management for year N to the European Parliament, the Council and the Court of Auditors by 31 March of year N + 1.
4. The Commission's accounting officer shall send the Agency's provisional accounts for year N, consolidated with the Commission's accounts, to the Court of Auditors by 31 March of year N + 1.
5. On receipt of the Court of Auditors' observations on the Agency's provisional accounts for year N, pursuant to Article 148 of Regulation (EC, Euratom) No 966/2012, the Executive Director shall draw up the Agency's final accounts under his or her own responsibility and forward them to the Management Board for an opinion.
6. The Management Board shall deliver an opinion on the Agency's final accounts for year N.
7. By 1 July of year N + 1 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.
8. The final accounts for year N shall be published in the Official Journal of the European Union by 15 November of year N + 1.
9. The Executive Director shall send the Court of Auditors a reply to its observations by 30 September of year N + 1 at the latest. He shall also send this reply to the Management Board.
10. The Executive Director shall submit to the European Parliament, at the latter's request, any information required for the smooth application of the discharge procedure for year N, in accordance with Article 165(3) of Regulation (EC, Euratom) No 966/2012.
11. On a recommendation from the Council acting by qualified majority, the European Parliament shall, before 15 May of the year 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 77*

Combating fraud

1. In order to combat fraud, corruption and other unlawful activities the provisions of Regulation (EU, Euratom) No 883/2013 shall apply without restriction. 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 adopt, without delay, the appropriate provisions applicable to all the employees of the Agency using the template set out in the Annex to that Agreement.

2. The Court of Auditors shall have the power of audit, on the basis of documents and on the spot, over all grant beneficiaries, contractors and subcontractors who have received Union funds from the Agency.
3. OLAF may carry out investigations, including on-the-spot checks and inspections with a view to establishing whether there has been fraud, corruption or any other illegal activity affecting the financial interests of the Union in connection with a grant or a contract funded by the Agency, in accordance with the provisions and procedures laid down in Regulation (EU, Euratom) No 883/2013<sup>1</sup> and Regulation (EC, Euratom) No 2185/96.<sup>2</sup>
4. Without prejudice to paragraphs 1, 2 and 3, cooperation agreements with third countries and international organisations, contracts, grant agreements and grant decisions of the Agency shall contain provisions expressly empowering the Court of Auditors and OLAF to conduct such audits and investigations, according to their respective competences.

#### *Article 78*

##### Financial provision

The financial rules applicable to the Agency shall be adopted by the Management Board after consulting the Commission. They shall not depart from Delegated Regulation (EU) No 1271/2013 unless such a departure is specifically required for the Agency's operation and the Commission has given its prior consent.

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<sup>1</sup> OJ L 136, 31.5.1999, p. 1.

<sup>2</sup> Council Regulation (EC, Euratom) No 2185/96 of 11 November 1996 concerning on-the-spot checks and inspections carried out by the Commission in order to protect the European Communities' financial interests against fraud and other irregularities (OJ L 292, 15.11.1996, p. 2).

## CHAPTER IV

## FINAL PROVISIONS

### *Article 79*

#### Committee Procedure

1. ~~The Commission shall be assisted by the committee established by Article 33a of Regulation (EC) No 562/2006. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.~~
2. ~~Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.~~
3. ~~Where the opinion of the committee is to be obtained by written procedure, that procedure shall be terminated without result when, within the time limit for delivery of the opinion, the chair of the committee so decides or two thirds of the committee members so request.~~
4. ~~Where the committee delivers no opinion, the Commission shall not adopt the draft implementing act and the third subparagraph of Article 5(4) of Regulation (EU) No 182/2011 shall apply.~~
5. ~~Where reference is made to this paragraph, Article 8 of Regulation (EU) No 182/2011, in conjunction with Article 5 thereof, shall apply.~~

### *Article 80*

#### Evaluation

1. By three years from the date of entry into force of this Regulation, and every three ~~five~~ years thereafter, the Commission shall commission an independent external evaluation carry out an evaluation to assess particularly the impact, effectiveness and efficiency of the Agency's performance and its working practices in relation to its objectives, mandate and tasks. The evaluation shall, in particular, address the possible need to modify the mandate of the Agency, and the financial implications of any such modification.

The evaluation shall include a specific analysis on the way the Charter of Fundamental Rights was complied with in the application of this Regulation.

2. The Commission shall send the evaluation report together with its conclusions on the report to the European Parliament, the Council and the Management Board. The Management Board may issue recommendations regarding changes to this Regulation, the Agency and its working practises to the Commission. The evaluation report and the conclusions on the report shall be made public.

3. On the occasion of every second evaluation, the Commission shall assess the results achieved by the Agency having regard to its objectives, mandate and tasks.

*Article 81*

Repeal

1. Council Regulation (EC) No 2007/2004, Regulation (EC) No 863/2007 and Council Decision 2005/267/EC<sup>1</sup> are repealed.
2. References to the repealed regulations shall be construed as references to this Regulation in accordance with the Annex.

*Article 82*

Entry into force and applicability

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

Article 19(5) and Articles 28, 29, 30 and 31 shall apply from three months after the entry into force of this Regulation.

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

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<sup>1</sup> Council Decision 2005/267/EC of 16 March 2005 establishing a secure web-based Information and Coordination Network for Member States' Migration Management Services (OJ L 83, 1.4.2005, p. 48).