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**LIMITE**

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**NOTE**

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From:	Presidency
To:	Delegations
Subject:	Proposal for a Regulation of the European Parliament and of the Council establishing a common procedure for international protection in the Union and repealing Directive 2013/32/EU (First reading)

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At its meetings on 10 October, the Asylum Working Party examined Presidency compromise suggestions for Articles 1-12 and 16-28. Comments made by delegations on these provisions as well as those subsequently submitted in writing appear in the footnotes of the Annex.

Presidency compromise suggestions to be discussed at the Asylum Working Party meeting on 27 October (Articles 29-68, 13-15 and the Recitals) are indicated with **bold** and [...]. In Article 13, **bold and underlining** has been used to indicate the text moved from parts of the same Article.

The Presidency would like delegations to indicate at the meeting on 27 October whether they are in a position to lift any scrutiny reservations on this proposal.

2016/0131 (COD)

Proposal for a

**REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**on the European Union Agency for Asylum and repealing Regulation (EU) No 439/2010<sup>1</sup>**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 78(1) and (2) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) The objective of the Union's policy on asylum is to develop and establish a Common European Asylum System (CEAS), consistent with the values and humanitarian tradition of the European Union and governed by the principle of solidarity and fair sharing of responsibility.

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<sup>1</sup> **BE, CY, FI, LT, PT, SK:** general scrutiny reservations. **BE, DE, ES, FR, IE:** this proposal should be dealt with in a package with other proposals in the field of asylum as it would be very difficult to agree on it without knowing the outcome of discussions on the other proposals.

- (2) The CEAS is based on common minimum standards for asylum procedures, recognition and protection offered at Union level, reception conditions and a system for determining the Member State responsible for asylum seekers. Notwithstanding progress on the CEAS, there are still significant disparities between the Member States in the granting of international protection and in the form that such international protection takes. Those disparities should be addressed by ensuring greater convergence in the assessment of applications for international protection and by guaranteeing a high and uniform level of application of Union law across the Union.
- (3) In its Communication of 6 April 2016, the Commission set out its options for improving the CEAS, namely to establish a sustainable and fair system for determining the Member States responsible for asylum seekers, to reinforce the Eurodac system, to achieve greater convergence in the asylum system and to prevent secondary movements, and develop an enhanced mandate for the European Asylum Support Office. That Communication is in line with calls by the European Council on 18 February 2016 to make progress towards reforming the EU's existing framework so as to ensure a humane and efficient asylum policy. It also proposes a way forward in line with the holistic approach to migration set out by the European Parliament in its own initiative report of 12 April 2016.
- (4) The European Asylum Support Office was established by Regulation (EU) No 439/2010 of the European Parliament and of the Council<sup>2</sup> and it took up its responsibilities on 1 February 2011. The European Asylum Support Office has enhanced practical cooperation among Member States on asylum-related matters and in assisting Member States in implementing their obligations under the CEAS. The European Asylum Support Office also provides support to Member States whose asylum and reception systems are under particular pressure. However, its role and function need to be further strengthened so as to not only support Member States in their practical cooperation but to reinforce and complement the asylum and reception systems of Member States.

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<sup>2</sup> Regulation (EU) No 439/2010 of the European Parliament and of the Council of 19 May 2010 establishing a European Asylum Support Office (OJ L 132, 29.5.2010, p. 11).

- (5) Having regard to structural weaknesses of the CEAS brought to the fore by large-scale and uncontrolled arrival of migrants and asylum seekers to the Union and the need for an efficient, high and uniform level of the application of Union asylum law in Member States, it is necessary to improve the implementation and functioning of the CEAS by building on the work of the European Asylum Support Office and further develop it into a fully-fledged agency which should be responsible for facilitating and improving the functioning of the CEAS, for enabling a sustainable and fair distribution of applications for international protection, for ensuring convergence in the assessment of applications for international protection across the Union, and for monitoring the operational and technical application of **the CEAS [...]**.
- (6) The tasks of the European Asylum Support Office should be expanded, and to reflect those changes, it should be renamed European Union Agency for Asylum. **It should remain the same legal person, with full continuity in all its activities and procedures.** The Agency should be a centre of expertise and its main role should be to strengthen practical cooperation and information exchange among Member States on asylum, promote Union law **on asylum** and operational standards to ensure a high degree of uniformity as regards asylum procedures, reception conditions and the assessment of protection needs across the Union, monitor the operational and technical application of **the CEAS [...]** and standards as regards asylum, support the Dublin system and provide increased operational and technical **assistance [...]** to Member States for the management of the asylum and reception systems, in particular those whose systems are subject to disproportionate pressure.
- (7) The European Union Agency for Asylum should work in close cooperation with Member States' asylum authorities, with national immigration and asylum services and other services, drawing on the capacity and expertise of those services, and with the Commission. Member States should cooperate with the Agency to ensure that it is able to fulfil its mandate. It is important, **for the purposes of this Regulation**, that the Agency and the Member States act in good faith and have a timely and accurate exchange of information. Any provision of statistical data should respect the technical and methodological specifications of Regulation (EC) No 862/2007.<sup>3</sup>

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<sup>3</sup> Regulation (EC) No 862/2007 of the European Parliament and of the Council of 11 July 2007 on Community statistics on migration and international protection and repealing

- (8) The European Union Agency for Asylum should gather and analyse information on the situation of asylum in the Union and in third countries insofar as this may have an impact on the Union. That should enable the Agency to assist Member States in better understanding the factors for asylum-related migration towards and within the Union, as well as for the purpose of early warning and preparedness of Member States.
- [(9) Having regard to the reform of the Dublin system, the European Union Agency for Asylum should provide the necessary support to the Member States [...] **by carrying out its tasks and obligations as set out in Regulation (EU) No XXX/XXX (Dublin Regulation).**]
- (10) The European Union Agency for Asylum should assist Member States with training of experts from all national administrations, courts and tribunals, and national services responsible for asylum matters, including the development of a **European Asylum [...]** curriculum. In addition, the Agency should ensure that all experts participating in asylum support teams [...] receive specialist training before their participation in operational activities organised by the Agency.
- (11) The European Union Agency for Asylum should ensure a more structured and streamlined production of information on countries of origin at the level of the European Union. It is necessary for the Agency to gather information and draw up reports providing for country of origin information by making use of European networks on country of origin information so as to avoid duplication and create synergies with national reports. Furthermore, to ensure convergence in the assessment of applications for international protection and the nature and quality of protection granted, the Agency should, together with Member States, [...] develop a common analysis **and guidance notes [...]** on the situation in specific countries of origin.

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Council Regulation (EEC) No 311/76 on the compilation of statistics on foreign workers (OJ L 199, 31.7.2007, p. 23).

- [(12) **The Commission should regularly review the designation of third countries as [...] safe countries of origin or safe third countries at Union level. [...] Having regard to the Agency's expertise, it should assist the Commission in reviewing those designations [...]. The Agency should also, at the request of the Commission, provide it with information on specific third countries which could be designated [...] as safe countries of origin or safe third countries at Union level [...].]**
- (13) To ensure a high degree of uniformity as regards asylum procedures, reception conditions and the assessment of protection needs across the Union, the Agency should organise and coordinate activities promoting Union law **on asylum**. For that purpose, the Agency should assist Member States by developing operational standards and **relevant** indicators [...]. The Agency should also develop guidelines on asylum-related matters and should enable the exchange of best practices among Member States.
- (14) The European Union Agency for Asylum, in close cooperation with the Commission and without prejudice to the Commission's responsibility as guardian of the Treaties, should establish a mechanism to monitor and assess **the operational and technical application [...] of the CEAS [...] with the aim to identify any weaknesses and shortcomings in the asylum and reception systems of the Member States and assess their capacity and readiness to meet the challenges resulting from a disproportionate pressure, in order to assist them to ensure an orderly management of those systems**. The monitoring and assessment should be comprehensive and should be based, in particular, on information provided by Member States, information analysis on the situation of asylum developed by the Agency, on-site visits and case sampling. **The Executive Director [...] should report on the [...] findings of the monitoring exercise to the Management Board which in turn should adopt [...] recommendations outlining the [...] measures to be taken by the Member State concerned including with the assistance of the Agency as necessary to address any weaknesses and [...] shortcomings [...].**

- (15) [...] **Where** the Member State concerned does not take the necessary measures to address the recommendations **within the set period of time** and the shortcomings in the asylum and reception systems are so serious that they jeopardise the functioning of the CEAS, the Commission should, based on its own assessment of the [...] seriousness of the shortcomings, adopt recommendations addressed to that Member State outlining the measures needed to remedy the [...] shortcomings. The Commission may need to organise on-site visits to the Member State concerned to verify the implementation **of the recommendations** [...]. Where necessary, the Commission should also identify the measures that should be taken by the Agency in support of that Member State. If the Member State should remain non-compliant for a certain period of time, the Commission may **make a proposal for a Council implementing act** [...] requiring the Agency to intervene in support of that Member State.
- (16) To facilitate and improve the proper functioning of the CEAS and to assist Member States in implementing their obligations within the framework of CEAS, the European Union Agency for Asylum should provide Member States with operational and technical assistance, in particular when their asylum and receptions systems are subject to disproportionate pressure. The Agency should provide the necessary operational and technical assistance through the deployment of asylum support teams consisting of experts from the Agency's own staff, experts from Member States or experts seconded by Member States to the Agency, and based on an operational plan. Those teams should support Member States with operational and technical measures, including by providing expertise relating to identification and registration of third countries nationals<sup>4</sup>, interpreting services, information on countries of origin and knowledge of the handling and management of asylum cases, as well as by assisting national authorities competent for the examination of applications for international protection and by assisting with relocation **or transfer of applicants or beneficiaries of international protection**. The arrangements for the asylum support teams should be governed by this Regulation in order to ensure their effective deployment.

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<sup>4</sup> **CZ:** insert "*identification of persons with special needs*".

- (17) In cases where a Member State's asylum and reception systems are subject to disproportionate pressure [...], the European Union Agency for Asylum should assist that Member State upon request or on the Agency's own initiative, by means of a comprehensive set of measures, including the deployment of experts from the asylum **reserve** [...] pool. To ensure the availability of those experts and their immediate deployment, the asylum intervention pool should constitute a reserve of experts from Member States amounting to a minimum of 500 persons. The Agency should itself be able to intervene in support of a Member State where despite the disproportionate pressure **that places exceptionally heavy and urgent demands on its asylum or reception systems**, [...] the Member State does not take sufficient action, **including by not requesting or accepting assistance** to address that pressure, with the consequence that the asylum and reception systems would be ineffective to the extent of jeopardising the functioning of the CEAS. A disproportionate number of applications for international protection for which a Member States is responsible may be an indication of disproportionate pressure.
- (18) To ensure that the asylum support teams, **including those** [...] deployed from the asylum [...] **reserve** pool are able to perform their tasks effectively with the means necessary, the European Union Agency for Asylum should be able to acquire or lease its own technical equipment. This should, however, not affect the obligation of **the host** Member States to supply the necessary facilities and equipment for the Agency to be able to provide the required operational and technical assistance. Any acquisition or leasing of equipment should be subject to a thorough needs and cost/benefit analysis by the Agency.
- (19)<sup>5</sup> For Member States that are faced with specific and disproportionate pressure on their asylum and reception systems due, in particular, to their geographical or demographic situation, the European Union Agency for Asylum should support the development of solidarity within the Union and assist in the better relocation **or transfer of applicants or** [...] beneficiaries of international protection among Member States, while ensuring that asylum and reception systems are not abused.

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<sup>5</sup> **CZ**: reservation.



- (20) At particular areas of the external borders where Member States face disproportionate migratory pressures characterised by large influxes of mixed migratory flows, referred to as hotspot areas, the Member States should be able to rely on increased operational and technical reinforcement by migration management support teams composed of teams of experts from Member States deployed through the European Union Agency for Asylum, the European **Border and Coast Guard** Agency [...] and Europol or other relevant Union **bodies, offices and** agencies, as well as experts from the staff of the European Union Agency for Asylum and the European **Border and Coast Guard** Agency [...]. The Agency should ensure coordination of its activities in the migration management support teams with the Commission and the other relevant Union **bodies, offices and** agencies.
- (21) For the purpose of fulfilling its mission, and to the extent required for the accomplishment of its tasks, the European Union Agency for Asylum should cooperate with Union bodies, **offices [...]** and **agencies [...]**, in particular with the European **Border and Coast Guard** Agency [...] and the European Union Agency for Fundamental Rights, in matters covered by this Regulation in the framework of working arrangements concluded in accordance with Union law and policy. Those working arrangements should receive the Commission's prior approval.
- (22) The European Union Agency for Asylum should cooperate with the European Migration Network, established by Council Decision 2008/381/EC<sup>6</sup>, to ensure synergies and avoid duplication of activities.

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<sup>6</sup> Council Decision of 14 May 2008 establishing a European Migration Network (OJ L 131, 21.5.2008, p. 7).

- (23) The European Union Agency for Asylum should cooperate with international organisations, in particular the United Nations High Commissioner for Refugees (UNHCR) in matters covered by this Regulation in the framework of working arrangements so as to benefit from their expertise and support. To that end, the roles of UNHCR and the other relevant international organisations should be fully recognised and those organisations should be involved in the work of the Agency. The working arrangements should receive the Commission's prior approval.
- (24) The European Union Agency for Asylum should facilitate operational cooperation between Member States **and third countries** in matters covered by this Regulation. It should also cooperate with **the** authorities of third-countries in the framework of working arrangements which should receive the Commission's prior approval. The Agency should act in accordance with the Union's external relations policy and under no circumstances should it formulate any independent external policy. In their cooperation with third countries, the Agency and the Member States should comply with norms and standards at least equivalent to those set by Union legislation also when the cooperation with third countries takes place on the territory of those countries.
- (25) The European Union Agency for Asylum should maintain a close dialogue with civil society with a view to exchanging information and pooling knowledge in the field of asylum. The Agency should set up a Consultative Forum which should constitute a mechanism for the exchange of information and the sharing of knowledge. The Consultative Forum should **advise [...]** the Executive Director and the Management Board in matters covered by this Regulation.
- (26) This Regulation respects fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union. All activities of the European Union Agency for Asylum shall be carried out in full respect of these fundamental rights and principles, including the right to asylum, the protection from *refoulement*, the right to respect for private and family life, the right to protection of personal data and the right to an effective remedy. The rights of the child and the special needs of vulnerable persons shall always be [...] taken into account.

- (27) The Commission and the Member States should be represented on the Management Board of the European Union Agency for Asylum in order to exercise a policy and political oversight over its workings. The Management Board should, where possible, consist of the operational heads of the Member States' asylum administrations or their representatives. It should be given the necessary powers, in particular to establish the budget, verify its execution, adopt the appropriate financial rules, establish transparent working procedures for decision-making by the Agency, and appoint an Executive Director and Deputy Executive Director. The Agency should be governed and operated in line with the principles of the Common Approach on Union decentralised agencies adopted on 19 July 2012 by the European Parliament, the Council and the European Commission.
- (28) [...]
- (29) The European Union Agency for Asylum should be independent as regards operational and technical matters and it should enjoy legal, administrative and financial autonomy. To that end, it is necessary and appropriate that the Agency should be a body of the Union having legal personality and exercising the implementing powers conferred upon it by this Regulation.
- (30) In order to guarantee the autonomy of the European Union Agency for Asylum, it should have its own budget, most of which comes essentially from a contribution from the Union. The financing of the Agency should be subject to an agreement by the budgetary authority as set out in point 31 of the Inter-institutional Agreement of 2 December 2013 between the European Parliament, the Council and the Commission on budgetary discipline, on cooperation in budgetary matters and on sound financial management.<sup>7</sup> The Union budgetary procedure should be applicable to the Union's contribution and to any grant chargeable to the general budget of the European Union. The auditing of accounts should be undertaken by the Court of Auditors.

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<sup>7</sup> OJ C 373, 20.12.2013, p. 1.

- (31) Any financial resources made available by the Agency under the form of grants, delegated agreements or form of contract in accordance with this Regulation should not result in double financing with other national, European or international sources.
- (32) 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) should apply to the European Union Agency for Asylum.
- (33) Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council<sup>8</sup> should apply without restriction to the European Union Agency for Asylum, 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.<sup>9</sup>
- (34) Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents<sup>10</sup> should apply to the European Union Agency for Asylum.

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<sup>8</sup> Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) and repealing Regulation (EC) No 1073/1999 of the European Parliament and of the Council and Council Regulation (Euratom) No 1074/1999 (OJ L 248, 18.9.2013, p. 1).

<sup>9</sup> OJ L 136, 31.5.1999, p. 15.

<sup>10</sup> Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ L 145, 31.5.2001, p. 43).

- (35) Any processing of personal data by the European Union Agency for Asylum within the framework of this Regulation should be conducted in accordance with Regulation (EC) No 45/2001 of the European Parliament and of the Council, and should respect the principles of necessity and proportionality.<sup>11</sup> The Agency may process personal data to perform its tasks of providing operational and technical assistance to Member States, to facilitate the exchange of information with Member States, the European **Border and Coast Guard** Agency [...], Europol or Eurojust, to analyse information on the situation of asylum and for administrative purposes. Any further processing of retained personal data for purposes other than those set out in this Regulation should be prohibited.<sup>12</sup>
- (36) Regulation (EU) No [...] 2016/**679** of the European Parliament and of the Council of **26 April 2016**<sup>13</sup> on the protection of **natural persons** [...] with regard to the processing of personal data and on the free movement of such data, **and repealing Directive 95/46/EC (General Data Protection Regulation)** applies to the processing of personal data by the Member States carried out in application of this Regulation unless such processing is carried out by the designated or verifying competent authorities of the Member States for the purposes of the prevention, investigation, detection or prosecution of terrorist offences or of other serious criminal offences including the safeguarding against and the prevention of threats to public security.

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<sup>11</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>12</sup> **HR:** the Recital should contain references to other basic principles of data processing, namely a reference to Article 4 of the Regulation (EU) 45/2001.

<sup>13</sup> OJ L 119, 4.5.2016, p. 1.

- (37) Directive (EU) 2016/680 [...] of the European Parliament and of the Council <sup>14</sup> of **27 April 2016** on the protection of **natural persons** [...] with regard to the processing of personal data by competent authorities for the purposes of prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and **on** the free movement of such data, **and repealing Council Framework Decision 2008/977/JHA** applies to the processing of personal data by competent authorities of the Member States for the purposes of the prevention, investigation detection or prosecution of terrorist offences or of other serious criminal offences pursuant to this Regulation.
- (38) The rules set out in Regulation (EU) No [...] 2016/679 regarding the protection of the rights and freedoms of individuals, notably their right to the protection of personal data concerning them, with regard to the processing of personal data should be specified in respect of the responsibility for the processing of the data, of safeguarding the rights of data subjects and of the supervision of data protection, in particular as far as certain sectors are concerned.
- (39) The Agency should process personal data only for the purposes of performing its tasks of providing operational and technical assistance, when carrying out case sampling for the purposes of the monitoring exercise, possibly handling applications for international protection from children or vulnerable persons, facilitating the exchange of information with Member States, the European **Border and Coast Guard** Agency [...], Europol or Eurojust and in the framework of information obtained when performing its tasks in the migration management support teams at hotspots, and for analysing information on the situation of asylum. Any processing of personal data should respect the principle of proportionality and be strictly limited to personal data necessary for these purposes.
- (40) Any personal data that the Agency processes, except those processed for administrative purposes, should be deleted after 30 days. A longer storage period is not necessary for the purposes for which the Agency processes personal data within the framework of this Regulation.
- (41) The European Data Protection Supervisor was consulted in accordance with Article 28(2) of Regulation (EC) No 45/2001 and delivered an opinion on **21 September 2016**.<sup>15</sup>

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<sup>14</sup> OJ L OJ L 119, 4.5.2016, p. 89.

<sup>15</sup> OJ C [...]

(42) Since the objectives of this Regulation, namely the need to facilitate the implementation and improve the functioning of the CEAS, to strengthen practical cooperation and information exchange among Member States on asylum-related matters, to promote Union law **on asylum** and operational standards to ensure a high degree of uniformity as regards asylum procedures, reception conditions and the assessment of protection needs across the Union, to monitor the operational and technical application of **the CEAS [...]** and to provide increased operational and technical **assistance [...]** to Member States for the management of the asylum and reception systems, in particular to Member States subject to disproportionate pressure on their asylum and reception systems, cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale and effects of the action, be better achieved at the level of the Union, the Union may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the TEU. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives.

(43) *[In accordance with Article 3 of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, those Member States have notified their wish to take part in the adoption and application of this Regulation]*

OR

*[In accordance with Articles 1 and 2 of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, and without prejudice to Article 4 of that Protocol, those Member States are not taking part in the adoption of this Regulation and are not bound by it or subject to its application.]*

OR

*[(XX) In accordance with Articles 1 and 2 of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, and without prejudice to Article 4 of that Protocol, the United Kingdom is not taking part in the adoption of this Regulation and is not bound by it or subject to its application.]*

*[(XX) In accordance with Article 3 of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, Ireland has notified (, by letter of ...,) its wish to take part in the adoption and application of this Regulation.]*

OR

*[(XX) In accordance with Article 3 of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, the United Kingdom has notified (, by letter of ...,) its wish to take part in the adoption and application of this Regulation.]*

*[(XX) In accordance with Articles 1 and 2 of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, and without prejudice to Article 4 of that Protocol, Ireland is not taking part in the adoption of this Regulation and is not bound by it or subject to its application.]*

- (44) In accordance with Articles 1 and 2 of the Protocol (No 22) on the Position of Denmark, annexed to the Treaties, Denmark is not taking part in the adoption of this Regulation and is not bound by it nor is it subject to its application.
- (45) Taking into account that Denmark has until now contributed to the practical cooperation between Member States within the area of asylum, the Agency should facilitate operational cooperation with Denmark. To that end, a Danish representative should be invited to participate in all the meetings of the Management Board, without the right to vote.
- (46) The competence to take decisions by Member States' asylum authorities on individual applications for international protection remains with Member States.



- (47) This Regulation aims to amend and expand the provisions of Regulation (EU) No 439/2010 of the European Parliament and of the Council. Since the amendments to be made are of a substantial nature, that act should, in the interests of clarity, be replaced and repealed. References to the repealed regulation should be construed as references to this Regulation.

HAVE ADOPTED THIS REGULATION:

## CHAPTER 1

### THE EUROPEAN UNION AGENCY FOR ASYLUM

#### *Article 1*

#### **Subject-matter and scope**<sup>16</sup>

1. The European Union Agency for Asylum (the Agency) shall ensure<sup>17</sup> the efficient and uniform application of Union asylum law in Member States. It shall facilitate the implementation and improve the functioning of the Common European Asylum System (CEAS), enabling convergence in the assessment of applications for international protection across the Union.<sup>18</sup>

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<sup>16</sup> **AT, FR:** further clarification is needed as to how the tasks of the Agency dovetail with the work done by the Commission. **EL:** it should be clearly stated in this Article that the role of the Agency to monitor the implementation of the asylum law by MS does not substitute the powers of the Commission in this respect. **EE:** the role of the Agency should be strengthened in areas where MS have less capability such as the assessment of safe countries of origin.

<sup>17</sup> **CZ:** replace with "*support*".

<sup>18</sup> **FR:** the task of the Agency should be to help to improve the functioning of the CEAS and facilitate convergence in the assessment of applications. **EL:** replace "shall ensure" with something like "provide assistance to Member States" or "contribute to Member States' asylum systems".

2. The Agency shall be a centre of expertise by virtue of its independence, the scientific and technical quality of the assistance it provides and the information it disseminates, the transparency of its operating procedures and methods, its diligence in performing the duties assigned to it, and the information technology support needed to fulfil its mandate.
3. The European Union Agency for Asylum shall be the new name for the European Asylum Support Office established by Regulation (EU) No 439/2010 of the European Parliament and of the Council. The activities of the Agency shall henceforth be based on this Regulation.

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## Article 2

### Tasks<sup>20</sup>

1. The Agency shall support Member States in implementing the CEAS and for that purpose it shall perform the following tasks:<sup>21</sup>
  - (a) facilitate, coordinate and strengthen practical cooperation and information exchange among Member States on the asylum and reception systems ;
  - (b) gather and analyse information on the situation of asylum and on the implementation of the CEAS;
  - (c)

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<sup>19</sup> **PL:** a new Article with relevant definitions should be added.

<sup>20</sup> **EE:** scrutiny reservation on the Article.

<sup>21</sup> **BE:** the introductory sentence should be reworded to refer to the mandate of the Agency including its monitoring function along the following lines: "*Following from the mandate as set out in Article 1, the Agency shall perform the following tasks:*". **CZ:** "*.. the following tasks in particular:*" in order not to limit the list. **FI** suggests to add the following task to the list: "*the Agency shall draw up and regularly update reports and other products providing for information on specific third countries (countries that could be considered safe countries)*".

- (d) assist Member States on training of experts from all national administrations, courts and tribunals, and national services responsible for asylum matters, including the development<sup>22</sup> of a European asylum curriculum<sup>23</sup>;
  - (e) draw up and regularly update reports and other documents providing for information on countries of origin at the level of the Union;<sup>24</sup>
  - (ee) set up and coordinate European networks on country of origin information;<sup>25</sup>
  - (f) coordinate efforts among Member States to engage in and develop a common analysis<sup>26</sup> of the situation in third countries of origin;<sup>27</sup>
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- (g) provide effective operational and technical assistance to Member States, in particular when they are subject to disproportionate pressure on their asylum and reception systems;<sup>29</sup>
  - (h) carry out the tasks and obligations set out in Regulation (EU) No XXX/XXX [the Dublin Regulation] and assist with the relocation or transfer of applicants or beneficiaries of international protection within the Union;<sup>30</sup>

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<sup>22</sup> **NL**: "... and review, when necessary..."

<sup>23</sup> **CZ**: the terms used for the training curriculum in this proposal should be harmonised. **PL**: definition of a common core curriculum should be included. **EL**: "*provide training to Member States experts..*"

<sup>24</sup> **EE**: scrutiny reservation. **EL**: ".. providing for information on countries of *origin and safe third countries...*"

<sup>25</sup> **BG, EL, FI**: the Agency should have the task to establish reliable information on safe third countries too. **CZ**: "*organise, promote and coordinate activities relating to country of origin information.*"

<sup>26</sup> **DE**: replace with "*guidance notes*".

<sup>27</sup> **EL**: ".. of the situation in third countries *origin and safe third countries;*"

<sup>28</sup> **EL** suggests to insert a new point: "*ff) assist the Commission in the designation of third countries as safe countries of origin and safe third countries*".

<sup>29</sup> **FR**: scrutiny reservation.

<sup>30</sup> **EE, FI, FR, HU, IE, LT, LV, PL**: scrutiny reservations concerning the mandatory corrective allocation mechanism set out in the Dublin Regulation. **FI**: "*voluntary relocation or transfer of applicants or beneficiaries...*" **ES, CZ**: reservations.

- (i) set up and deploy asylum support teams and an asylum reserve pool;<sup>31</sup>
- (j) deploy the necessary technical equipment for the asylum support teams and the experts from the asylum reserve pool;
- (k) establish, in consultation with Member States, operational standards, indicators, guidelines and best practices in regard to the implementation of all instruments of Union law on asylum;<sup>32</sup>
- (l) monitor the practical application of the CEAS;<sup>33</sup>
- (m) support Member States in their cooperation with third countries in matters related to asylum, in particular as regards resettlement.<sup>34</sup>

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<sup>31</sup> **FR:** scrutiny reservation.

<sup>32</sup> **PL:** "*promote* operational standards ..." stating that the term "indicators" should be explained. **EE:** "*may* establish..."

<sup>33</sup> **EE, PL:** scrutiny reservations. **LV** expressed concerns regarding this task of the Agency. **HU** cannot accept this task of the Agency. **IT:** "monitor and assess the implementation of the CEAS as well as the asylum and reception systems of Member States *in constant cooperation with the latter*;" **PL:** "*gather information on* the implementation of CEAS". **EL:** reservation on the provision. **CZ:** "...the practical *implementation* of the CEAS"

<sup>34</sup> **CZ:** the role of the Agency in resettlement should be defined in greater details. **FI:** it could be specified that the Agency coordinates information exchange and operational cooperation between MS and third countries. **IT:** "support Member States in their cooperation with third countries in matters related to asylum, in particular as regards resettlement, *according to procedures agreed upon with the Member States concerned*". **FR, PL:** scrutiny reservations, depends on further discussions on the matter. **NL:** "in particular *carrying out tasks in the area of resettlement as set out in Regulation (EU) No XXX/XXX [the Union Resettlement Framework]*"

2. The Agency shall support<sup>35</sup> Member States in relation to the external dimension of the CEAS. In this regard, and in agreement with the Commission, the Agency shall coordinate the exchange of information and other action taken on issues arising from the implementation of instruments and mechanisms relating to the external dimension of the CEAS.<sup>36</sup>
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 paragraphs 1 and 2, and shall be carried out in accordance with the relevant communication and dissemination plans adopted by the Management Board.

## CHAPTER 2

### PRACTICAL COOPERATION AND INFORMATION ON ASYLUM

#### *Article 3*

#### **Duty to cooperate in good faith and exchange information<sup>37</sup>**

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<sup>35</sup> **EL:** "*may support*".

<sup>36</sup> **BE, IT:** what is the extent and content of such coordination in practice? **IT:** "The Agency ~~shall~~ *may* support Member States in relation to the external dimension of the CEAS. In this regard, and in agreement with the Commission, the Agency shall ~~coordinate~~ *facilitate* the exchange of information and other action taken on issues arising from the implementation of instruments and mechanisms relating to the external dimension of the CEAS." **PL:** the paragraph should be further developed as it is not clear and precise enough. **EL:** "*The Member States may request the support of the Agency in relation to the external dimension of the CEAS. In this regards...*"

<sup>37</sup> **LT:** scrutiny reservation on the Article. **CZ:** the role of MS experts networks and dedicated NCPs in information and data provision should be set out clearly in this proposal. **SE:** it is important to avoid duplicating the work done by UNHCR and IOM.

1. For the purposes of this Regulation, the Agency and the Member States' asylum authorities, national immigration and asylum services and other national services<sup>38</sup> shall be subject to a duty to cooperate in good faith and an obligation to exchange information.<sup>39</sup>
2. The Agency shall work closely with the Member States' asylum authorities, with national immigration and asylum services and other national services and with the Commission. The Agency shall carry out its duties without prejudice to those assigned to other relevant bodies of the Union and shall work closely with those bodies and with the United Nations High Commissioner for Refugees (UNHCR)<sup>40</sup>.
3. The Agency shall organise, promote and coordinate activities enabling the exchange of information among Member States, including through the establishment of networks as appropriate. For those purposes, the Agency and the Member States' asylum authorities, national immigration and asylum services and other national services shall share<sup>41</sup>, in a timely and accurate manner, all necessary information.

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<sup>38</sup> **CZ:** what is meant by "other nationals services"? **EL:** "other *competent* national services".

<sup>39</sup> **CZ, EE** (scrutiny reservation), **FR, PL, RO:** cannot support the mandatory exchange of information. **CZ, LT:** the scope of obligatory information exchange should be clearly defined by listing specific areas. **MT:** not clear what kind of information should be exchanged, pointing out that sensitive information cannot be shared. **LV:** it is important to ensure that this duty does not affect the MS' capacity to manage its asylum systems. **PL** suggested: "The Agency and the Member States' asylum authorities, national immigration and asylum services and other national services *should cooperate and exchange* information in good faith" adding that it should be clearly defined what kind of information needs to be exchanged. **CZ:** "... and an obligation to exchange *relevant* information. *The type and amount of such information should be stipulated by the Management Board, in cooperation with the Member States' experts.*" **NL:** "... and an obligation to exchange information *as specified in this Regulation.*"

<sup>40</sup> **SE:** it should be clear that there are no overlaps when both the MS and the Agency work closely with UNHCR.

<sup>41</sup> **PL:** "provide".

*Article 4*

**Information analysis on the situation of asylum<sup>42</sup>**

1. The Agency shall gather and analyse information on the situation of asylum in the Union and third countries insofar as this may have an impact on the Union, including up-to-date information on root causes, migratory and refugee flows as well as on any sudden arrivals of large numbers of third-country nationals which may cause disproportionate pressure on asylum and reception systems, with a view to foster quick and reliable mutual information to the Member States and to identify possible risks to the Member States' asylum systems.
2. The Agency shall base its analysis on information provided, in particular, by Member States, relevant Union institutions and agencies, the European External Action Service as well as UNHCR and other international organisations.

For this purpose, the Agency shall work in close collaboration with the European Border and Coast Guard Agency, and shall, in particular, rely on the risk analysis carried out by that Agency so as to ensure the highest level of consistency and convergence in the information provided by both Agencies.

3. The Agency shall ensure the rapid exchange of relevant information amongst Member States and with the Commission. It shall also submit, in a timely and accurate manner, the results of its analysis to the Management Board.

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<sup>42</sup> **CZ:** the role of MS experts networks and dedicated NCPs in information and data provision should be set out clearly in this proposal.

Article 5

**Information on the implementation of the CEAS<sup>43</sup>**

1. The Agency shall organise, coordinate and promote the exchange of information among Member States and between the Commission and the Member States concerning the implementation<sup>44</sup> of all instruments of Union law on asylum.
2. The Agency shall create factual, legal and case law databases on the application and interpretation of Union, national and international asylum instruments making use, in particular, of existing arrangements. No personal data shall be stored in such databases, unless such data has been obtained by the Agency from documents that are publicly accessible.

For that purpose, the Agency shall gather information on the following:<sup>45</sup>

- (a) the processing of applications for international protection by national administrations and authorities;<sup>46</sup>
- (b) national law and legal developments in the field of asylum, including case law;
- (c) relevant case law of the Court of Justice of the European Union and of the European Court of Human Rights.<sup>47</sup>

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<sup>43</sup> **CZ:** the role of MS experts networks and dedicated NCPs in information and data provision should be set out clearly in this proposal. **NL:** the title should be aligned with the wording in point 1 of Article 2(1).

<sup>44</sup> **CZ:** "the *practical* implementation". **NL:** "... implementation *and practical application* of..."

<sup>45</sup> **BE:** information on the reception conditions should be added. **FR:** it should be clarified what kind of information is meant here. **LT:** scrutiny reservation suggesting to use existing networks of information exchange.

<sup>46</sup> **IT, PL, SE:** it should be clarified as to what kind of information is to be gathered. If it is statistics, then that should be mentioned explicitly. **SE:** only general information regarding the processing of applications for international protection should be shared with the Agency. Information concerning specific cases would be too sensitive to share. **IT:** "the ~~processing~~ *number* of applications for international protection *and decisions* by national administrations and authorities;"

<sup>47</sup> **AT:** it is not necessary to expand the database of the Agency to include information on the case law of the Court. **FI:** while supporting this task of the Agency, it is important to bear in mind the need to protect personal data.



*Article 6 - deleted*

*Article 7*

**Training**

1. The Agency shall establish and develop training for members of its own staff, members of all national administrations, courts and tribunals, and national services responsible for asylum matters in the Member States.
2. The Agency shall develop such training in close cooperation with Member States and, in cooperation with appropriate training entities in the Member States, including academic institutions and other relevant organisations.
3. The Agency shall develop general, specific, thematic or ad hoc training tools, which may include ‘train-the-trainers’ methodology and e-learning.
4. The Agency shall establish and develop a European asylum curriculum<sup>48</sup> taking into account the Union's existing cooperation in that field. Member States shall integrate the European asylum curriculum<sup>49</sup> in the training of staff of national services and authorities responsible for asylum matters pursuant to their obligations under Union law on asylum to ensure proper training of their staff.<sup>50</sup>

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<sup>48</sup> **CZ**: the terms for the training curriculum should be harmonised in this proposal.

<sup>49</sup> **IT**: "the *European Asylum* curriculum".

<sup>50</sup> **BE, CZ, EE** (scrutiny reservation), **FR**: it should be clear from the wording that national authorities can choose the training modules best suited for the needs of their staff. **ES**: the relationship between paragraphs 4 and 5 is unclear.

5. The specific or thematic training activities regarding asylum matters shall include:<sup>51</sup>
- (a) international and Union fundamental rights standards, and in particular the provisions of the Charter of Fundamental Rights of the European Union, as well as international and Union law on asylum, including specific legal and case law issues;
  - (b) issues related to the handling of applications for international protection, in particular those from vulnerable persons with specific needs and children, including as regards the best interests of the child assessment, specific procedural safeguards such as respect of the child's right to be heard and child protection aspects such as age-assessment techniques;<sup>52</sup>
  - (c) interview techniques, including special attention given to children, vulnerable groups and victims of torture;
  - (d) *deleted*
  - (e) the use of expert medical and legal reports in asylum procedures;
  - (f) issues relating to the production and use of information on countries of origin;
  - (g) reception conditions, including special attention given to unaccompanied children and children with their families, vulnerable groups and victims of torture;
  - (h) issues related to cultural mediation;<sup>53</sup>
  - (i) issues related to the implementation of resettlement schemes<sup>54</sup>.

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<sup>51</sup> **ES:** scrutiny reservation. **EL:** "... shall *in particular* include:..." **CZ:** "The specific or thematic training activities regarding asylum matters shall, *in particular*, include:". **IT** suggested to add the following points: "*issues related to cultural mediation*" and "*issues related to the implementation of resettlement schemes*".

<sup>52</sup> **DE:** it should be further clarified what groups are included here.

<sup>53</sup> **BE, ES:** scrutiny reservations. **AT, SE:** the meaning should be clarified.

<sup>54</sup> **CZ, NL:** "issues related to resettlement". **BE, ES:** scrutiny reservations.

6. The training offered shall be of high quality and shall identify key principles and best practices with a view to greater convergence of administrative methods, decisions and legal practice, in full respect of the independence of national courts and tribunals.
7. The Agency shall take the necessary initiatives to ensure that the experts who participate in the asylum support teams and the asylum reserve pool, have received specialist training relevant to their duties and functions prior to their participation in the operational activities organised by the Agency. The Agency shall, where necessary, conduct regular exercises with those experts in accordance with the specialist training and exercise schedule referred to in its annual work programme.<sup>55</sup>
8. The Agency may organise training activities in cooperation with Member States or third countries on their territory.

### CHAPTER 3

#### COUNTRY INFORMATION AND COMMON ANALYSIS<sup>56</sup>

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<sup>55</sup> **BE**: regular exercises should not be mandatory. **BE, FR**: the Agency should provide short training to these experts prior to deployment instead. **CZ**: it is not clear what "regular exercises" refers to (how often, where and whether compulsory) pointing out that the current system is sufficient. **AT**: activities requiring additional resources should be avoided. **PL**: ".. The Agency shall conduct regular exercises *also* with those experts in accordance with ..."

<sup>56</sup> **BE** would prefer "Country information and guidance". **FI** suggests to insert the following new Article in this Chapter: "*To foster convergence in applying the criteria of first country of asylum or safe third country established in [APR] Regulation xxxx/xx/EU of the European Parliament and of the Council, the Agency shall draw up and regularly update reports and other products providing for information on specific third countries.*"

## Article 8

### Information on countries of origin at Union level<sup>57</sup>

1. The Agency shall be a centre for gathering relevant, reliable, accurate and up-to date information on countries of origin of persons applying for international protection in a transparent and impartial manner, making use of relevant information, including child-specific information and targeted information on persons belonging to vulnerable groups<sup>58</sup>. It shall draw up and regularly update reports and other products providing for information on countries of origin at the level of the Union including on thematic issues specific to countries of origin.<sup>59</sup>
2. The Agency shall, in particular:
  - (a) make use of all relevant sources of information, including its information analysis on the situation of asylum and other information gathered from governmental, non-governmental and international organisations, including through the networks referred to in Article 9,<sup>60</sup> as well as Union institutions, agencies, bodies, offices and the European External Action Service;<sup>61</sup>
  - (b) manage and further develop a portal for gathering and disseminating information on countries of origin;<sup>62</sup>

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<sup>57</sup> **EL:** the Agency should also analyse the situation in third or transit countries indicating which ones should be considered as safe third countries.

<sup>58</sup> **FR:** when compared to Article 4 of the existing Regulation, "in a transparent and impartial manner" has been deleted. **MT:** "The Agency shall be *an independent* centre for gathering *objective*, relevant, accurate and up-to date information on countries of origin..." **IT:** "The Agency shall be a centre for gathering relevant, reliable, accurate, *transparent, impartial* and up-to date information on countries of origin..." **PL:** " ... applying for international protection *in a transparent and impartial manner*, including..." pointing out that it should be clearly defined which countries of origin would be included.

<sup>59</sup> **AT:** the reports should be limited to the most important countries of origin.

<sup>60</sup> **EL:** insert "*fact-finding missions* as well as ..."

<sup>61</sup> **NL:** "... non-governmental and other *relevant* organisations, including through..."

<sup>62</sup> **MT:** "manage and further develop a portal for gathering *and disseminating* information on countries of origin;" **IT:** "manage and further develop a portal for gathering *and disseminating* information on countries of origin *accessible to all practitioners in the asylum field, including judiciary*;"

- (c) develop a common format and a common methodology including terms of reference, in line with the requirements of Union law on asylum, for developing reports and other products with information on countries of origin at the level of the Union.

#### *Article 9*

#### **European networks on country of origin information**

1. The Agency shall ensure the coordination of national initiatives producing country of origin information by establishing and managing networks among Member States on country of origin information.<sup>63</sup>
2. The purpose of the networks provided for in paragraph 1 shall be for Member States to:<sup>64</sup>
  - (a) exchange and update national reports and other products on countries of origin including thematic issues specific to countries of origin;
  - (b) submit queries to the Agency related to specific questions of fact that may arise from applications for international protection, without prejudice to confidentiality rules as established in national law.

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#### *Article 10*

#### **Common analysis on country of origin information<sup>66</sup>**

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<sup>63</sup> **CZ:** such MS' networks should guide the work of the Agency in this area.

<sup>64</sup> **CZ:** would prefer a may-clause.

<sup>65</sup> **EL** suggests to add the following new point: "*(c) submit to the Agency any relevant information regarding the review or the update of a common analysis and guidance notes.*"

<sup>66</sup> **CZ:** reservation on the Article.

1. To foster convergence in applying the assessment criteria established in Directive 2011/95/EU of the European Parliament and of the Council,<sup>67</sup> the Agency shall coordinate efforts among Member States to develop a common analysis and guidance notes on the situation in specific countries of origin.<sup>68</sup>
2. The Executive Director shall, after consulting the Commission<sup>69</sup>, submit the common analysis and guidance notes to the Management Board for endorsement.<sup>70</sup> Member States shall be required<sup>71</sup> to take the common analysis and guidance notes into account<sup>72</sup> when examining applications for international protection, without prejudice to their competence for deciding on individual applications.<sup>73</sup>

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<sup>67</sup> Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast) (OJ L 337, 20.12.2011, p. 9).

<sup>68</sup> **BE**: delete the reference to common analysis. **CZ**: it should be clearly stated that such analysis will be of non-binding character. **FI**: the duplication of work between MS and the Agency should be avoided; the needs of MS must be the starting point for the production of country of origin information. **SE**: it is important to make a distinction between country of origin information and common analysis of country of origin information. **PL**: the difference between common analysis and guidance should be clearly defined. **EL** suggests to add at the end of the paragraph: "*In doing so it shall take into account the relevant guidelines of UNHCR*".

<sup>69</sup> **BE, EL, FR** (scrutiny reservation), **PT**: why should the Cion be consulted?

<sup>70</sup> **EL**: delete the first sentence of the paragraph.

<sup>71</sup> **CZ**: "*should*".

<sup>72</sup> **LV**: insert "*as necessary*".

<sup>73</sup> **CZ, SE**: the meaning of "shall be required to take that common analysis into account ... without prejudice to their competence..." should be clarified. **SE**: the principle of free assessment of evidence must not be restricted. **CZ, EE, PL, SK**: opposed to the obligation for MS to take into account the common analysis. **LV**: the wording of this paragraph should be more flexible. **CY**: scrutiny reservation on the nature of the guidance notes. **NL**: delete references to "common analysis" in this paragraph.

3. The Agency shall ensure that the common analysis and guidance notes are kept constantly under review and updated to the extent necessary. Any such revision shall likewise require prior consultation of the Commission and endorsement by the Management Board.<sup>74</sup>

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<sup>74</sup> **SE:** how will the Agency monitor the situation in in the countries of origin in order to keep the common analysis up to date and what factors would trigger a revision of the common analysis? **NL:** "The Agency shall ensure that the guidance notes are kept under *regular* review... " **NL** also suggested to turn the last part of paragraph 4 into the last sentence in paragraph 3: "... Member States may submit to the Agency any relevant information indicating that a review or an update of the common analysis or guidance notes is necessary." **AT:** why is prior consultation of the Commission required? **EL:** delete the last sentence of the paragraph.

4. The Member States shall, on a monthly basis,<sup>75</sup> submit to the Agency statistics on the number of decisions taken in relation to applicants from each country of origin which is the subject of the common analysis and on the<sup>76</sup> decisions where that common analysis was not followed and<sup>77</sup> any other relevant information indicating that a review or an update of the common analysis and guidance notes is necessary.<sup>78</sup>

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<sup>75</sup> **PL:** "The Member States *may, every 6 months, ...*" **BE, FR:** opposed to the submission of statistics on a monthly basis. **BE:** statistics should be provided whenever there are changes in the application of guidance notes.

<sup>76</sup> **BG:** insert: "*number of*".

<sup>77</sup> **BG:** insert "*if necessary*".

<sup>78</sup> **EE:** reservation. **AT, ES** (reservation), **FR:** opposed to the submission of statistics which says nothing about the reasons for following or not the common analysis and create additional administrative burden. **AT:** Member States should simply inform the Agency when guidance notes are no longer up to date. **PL:** what does "any other relevant information" refer to? **CY:** scrutiny reservation. **AT, LT** (scrutiny reservation), **PT:** the obligations set out in this paragraph duplicate existing obligations and constitute an administrative burden for MS. **FI, SE:** this should be a may-provision as this could concern confidential information relating to individual cases. **IT:** scrutiny reservation concerning the administrative burden related to this obligation. **NL:** "The Member States shall, on a monthly basis, submit to the Agency statistics on the number of *positive and negative* decisions taken in relation to applicants from each country of origin which is the subject of a common analysis *and a guidance note.*" **CZ:** delete "and on the decisions where that common analysis was not followed". **FI:** this provision would be difficult to apply in practice. **EL:** "The Member States shall, on a monthly basis submit to the Agency statistics on the decisions taken in relation to applicants from each country of origin which is the subject of the common analysis. *Where there is divergence of more than fifteen per cent from the average EU eligibility rate for such a country of origin in one Member State, the Member State will have to provide explanations as to the reasons why that common analysis was not followed and any other relevant information indicating that a review or an update of the common analysis and guidance notes is necessary.*" **DE:** the requirement to submit information on deviation from the common analysis is impractical and does not help to understand the underlying reasons. MS should rather communicate the need to revise the analysis.



Article 11

**Designation of safe countries of origin and safe third countries**<sup>79</sup>

1. The Agency shall assist<sup>80</sup> the Commission in regularly reviewing the situation in third countries which are included in the common EU list of safe countries of origin established by Regulation (EU) No XXX/XXX, including those that have been suspended by the Commission and those that have been removed from that list.
- 2.<sup>81</sup> The Agency shall, at the request of the Commission, provide it with information on specific third countries which could be considered for inclusion in the common EU list of safe countries of origin in accordance with Regulation (EU) No XXX/XXX.

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<sup>79</sup> **FI:** doubting whether the resources of the Agency will allow it to carry out such tasks or whether this will add to the workload of national authorities. Also, the regular reviewing of the situation in third countries might increase the workload of national authorities. **SE:** what does this mean for MS (such as SE) that have no lists of safe countries of origin or safe third countries? **EL:** suggests to insert the following new paragraphs: "3. *The Agency shall assist the Commission in the designation of third countries as safe third countries at Union Level, in accordance with Articles xxx of the Regulation (EU) No XXX/XXX.* 4. *The Agency shall assist the Commission in reviewing the situation in third countries designated as safe third countries at the Union level.*5. *The Agency shall provide the Commission with all information relevant to the suspension or removal of the designation of a third country as a safe third country according to Article xx of the Regulation (EU) No XXX/XXX*".

<sup>80</sup> **IT:** replace with "support".

<sup>81</sup> **IT:** "The Agency shall [...], provide *the Commission* with information..." **NL:** "... in the common EU list of safe countries of origin *or safe third countries at Union level* in accordance with..."

- 3.<sup>82</sup> When notifying the Commission in accordance with Articles 37(4), 38(5) and 39(7) of Directive 2013/32/EU, Member States shall also inform the Agency of the third countries which are designated as safe countries of origin or safe third countries or to which the concepts of first country of asylum, safe third country, or European safe third country is applied pursuant to Articles 35, 38 and 39 of Directive 2013/32/EU, respectively.

The Commission may request the Agency to carry out a review of the situation in any such third country in order to consider whether to designate it as a safe country of origin or safe third country at Union level.<sup>83</sup>

## CHAPTER 4

### OPERATIONAL STANDARDS AND GUIDELINES

#### *Article 12*

#### **Operational standards, guidelines and best practices**

1. The Agency shall organise and coordinate activities promoting a correct and effective implementation of Union law, including through the development of operational standards, indicators, guidelines or best practices on asylum-related matters, and the exchange of best practices in asylum-related matters among Member States.<sup>84</sup>

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<sup>82</sup> **FR, NL:** this paragraph partially overlaps with paragraph 2.

<sup>83</sup> **EL:** scrutiny reservation on this paragraph. **NL:** the paragraph should be deleted.

<sup>84</sup> **AT, BE, EL, FR, IT, MT, PL:** these instruments should be worked out by the Agency in cooperation with MS. **SE:** further information is needed as to the content of these instruments which should be clearly defined. **CZ, LT, PL:** it should be clearly stated that these instruments are of non-binding character or advisory in nature. **FI:** the Agency could also disseminate information on the relevant case law. However, these instruments should be without prejudice to the right of national authorities to take different decisions in different individual cases. **EL:** what would be the legal validity of these standards and guidelines?

2. The Agency shall, on its own initiative or at the request of the Commission, and in consultation with the Commission and the Member States, develop operational standards and relevant indicators on the implementation of the instruments of Union law on asylum as well as guidelines and best practices related to the implementation of the instruments of Union law on asylum.<sup>85</sup> The Agency shall, after adoption by the Management Board, communicate those standards, indicators, guidelines or best practices to the Member States and to the Commission.<sup>86</sup>
- 3.<sup>87</sup> The Agency shall, at the request of Member States, assist<sup>88</sup> them to apply the operational standards, guidelines and best practices to their asylum and reception systems by providing the necessary expertise or operational and technical assistance.

## CHAPTER 5<sup>89</sup>

### MONITORING AND ASSESSMENT

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<sup>85</sup> **CZ:** "The Agency shall, on its own initiative or at the request of the Commission, and in consultation with the Commission and the Member States, develop operational standards and relevant indicators *as well as guidelines and best practices* on the implementation of the instruments of Union law on asylum. The Agency shall, after adoption by the Management Board...". **DE:** what is the procedure for the consultation referred to here? **BE:** "... or at the request of the Commission *or Member States*, and in consultation with..."

<sup>86</sup> **MT:** ~~The Agency shall, on its own initiative or at the request of the Commission, and in consultation with the Commission, develop~~ *The development of the operational standards on the implementation of the instruments of Union law on asylum and indicators for monitoring compliance with those operational standards as well as guidelines and best practices related to the implementation of the instruments of Union law on asylum shall be done by the Agency, on its own initiative or at the request of the Commission, and in consultation with the Member States and the Commission. The Agency shall, following consultation with the Commission and after adoption by the Management Board, communicate those standards, indicators, guidelines or best practices to the Member States.*"

<sup>87</sup> **EE** (scrutiny reservation): opposed to statutory guidelines and standards.

<sup>88</sup> **IT:** replace with "*support*".

<sup>89</sup> **EL, CZ, IT, SI, RO:** reservations on this Chapter. **EL:** the control function should be left for the Cion, the Agency's role should be to support MS and cooperate with them. The Agency's monitoring role as proposed here is incompatible with the TFEU. **EE:** this Chapter poses problems, the obligations of MS are excessive.

**Mechanism for monitoring the operational and technical application of the CEAS [...]**

1. The Agency, in close cooperation with the Commission, shall establish a **monitoring mechanism to identify any weaknesses and shortcomings in the asylum and reception systems of the Member States and assess their capacity and readiness to meet the challenges resulting from a disproportionate pressure, in order to assist them to ensure an orderly management of those systems.**
2. **The monitoring shall be carried out with regard to the operational and technical application of all aspects of the CEAS including:**
  - (a) [...] the Dublin system, [...] asylum procedures, the application of criteria determining protection needs and the **type** [...] of protection afforded to persons in need of international protection by Member States, including as regards the respect of fundamental rights, child protection safeguards and the needs of vulnerable persons;
  - (b) [...] the [...] reception **conditions** [...], capabilities, infrastructure, equipment, **financial resources**, staff available **and the capacity of member States' asylum authorities** [...] for translation, [...] interpretation **and judicial remedy** [...] **to be able to handle** [...] asylum cases efficiently [...].
  - (c) [...] **the** operational standards, indicators, guidelines and best practices on asylum.<sup>90</sup>
3. The Agency may, in particular, base its assessment<sup>91</sup> on information provided by Member States<sup>92</sup>, information analysis on the situation of asylum developed by the Agency, on-site visits and case sampling.

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<sup>90</sup> **CZ:** the paragraph should be deleted as compliance with non-binding instruments cannot be monitored. **IT:** how can the Agency monitor compliance with non-binding instruments? **LV:** this is disproportionate considering the voluntary nature of these instruments. **MT:** this should not be the task of the Agency. **EL:** it should be clarified what the operational standards, indicators and best practices are that MS are expected to comply with. **PL:** it should be clearly stated whether these instruments are legally binding and if this is not the case then compliance cannot be monitored.

<sup>91</sup> **PL:** replace "assessment" with "*analysis*".

<sup>92</sup> **SE:** what kind of information should MS provide?

4. [...] Member States shall, at the request of the Agency, provide it with the necessary information **in particular** as regards asylum procedures, equipment, infrastructure, reception conditions, recognition rates and **type** [...] of protection as well as staff and financial resources<sup>93</sup> at national level to ensure an efficient management of the asylum and reception systems.<sup>94</sup> [...]

**The Agency may request Member States to provide it with their contingency planning for measures to be taken to deal with such possible disproportionate pressure and shall assist Member States to prepare and review their contingency planning, where necessary.**<sup>95 96</sup>

5. **The Member States shall cooperate with the Agency, including by facilitating any on-site visit carried out for the purposes of the monitoring exercise.**<sup>97</sup>

#### *Article 14*

#### **Procedure [...] and follow-up**

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<sup>93</sup> **IT:** delete the reference to "financial resources".

<sup>94</sup> **DE, RO:** the obligations of MS set out in this paragraph seem excessive. **MT:** the paragraph should provide more flexibility to MS, it is important to ensure that the information provided stays confidential. **CZ:** the scope of such obligation is too broad and would create excessive administrative burden both for MS and the Agency (especially re infrastructure, equipment, staff, finances). **FI:** this duty might create excessive administrative burden for MS. **BG, HR:** opposed to an obligation to provide information that is additional to the already existing obligations of MS. **HR:** this duty would further burden MS and affect negatively the implementation of CEAS.

<sup>95</sup> *Text moved from other parts of this Article.*

<sup>96</sup> **EL, FR:** concerns regarding the possibility to impose contingency planning on MS at EU level. **EL:** how can disproportionate pressure be measured? It is important to take into account that not all MS are exposed to the pressure in the same way. The sovereignty of MS should be respected; reservation on the right of the Agency to act on its own initiative when disproportionate pressure occurs. **RO:** this should happen at the request of MS. **CZ:** the inclusion of contingency planning is unclear and possibly something that would create excessive administrative burden. **PL:** extending the Agency's monitoring powers needs further discussion, also the concerned MS should be involved in the procedure.

<sup>97</sup> *Text moved from other parts of this Article.*

1. The Management Board shall, in consultation with the Commission, set the programme for monitoring [...] the **operational and technical application of the CEAS** [...] in each Member State, or [...] on the basis of thematic or specific aspects of the **CEAS with regard to all Member States** [...]. **That programme shall indicate that each Member State shall be monitored at least once in every five-year period.** [...]
2. The Agency may initiate a monitoring exercise for the assessment of the asylum or reception systems of a Member State **either** on its own initiative, **in consultation with the Commission**, or at the request of the Commission whenever **based on the information analysis** there are serious concerns regarding the functioning of any aspect of that Member State's asylum or reception systems.<sup>98</sup>
2. [...]
3. [...]
3. The Executive Director, [...] **in** consultation with the Commission, shall submit<sup>99</sup> **the findings of the monitoring exercise and the** draft recommendations to the Member State concerned. **Those draft recommendations shall** outline [...] the[...] measures to **be taken by the Member State, including with the assistance of the Agency as necessary**, to address **any weaknesses and** shortcomings identified in the monitoring exercise [...]. The Member State concerned shall be given one month to comment on the **findings and the** draft recommendations. After **taking into account** [...] those comments, the Management Board shall adopt the recommendations **indicating a time limit by when any necessary measure need to be taken by the Member State concerned** [...].<sup>100</sup>

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<sup>98</sup> **FR:** doubts regarding the possibility of the Agency to impose a monitoring exercise. **CZ:** such a monitoring exercise should only be initiated in cooperation with and in agreement with the respective MS. **FI:** this could be a shall-clause obligating the Agency to initiate a monitoring exercise which would make this instrument more efficient as is the case in the Frontex mandate. **IT:** this paragraph is misplaced here since it is not linked to the annual/multiannual programming.

<sup>99</sup> **IT:** insert "*where necessary*".

<sup>100</sup> **IT:** "The Member State concerned shall be given one month to comment on the draft recommendations *and such comments will be duly taken into account in the final draft recommendations.* [...] The Management Board shall adopt...". **PL:** the period of one month needs to be extended.

5. [...]

6. [...]

[...]

4. Where a **Member State does not take the necessary measures within the time-limit indicated by the Management Board and [...]** the **weaknesses and** shortcomings in the asylum and reception systems **of that Member State** are so serious that they jeopardise the functioning of the CEAS<sup>101</sup>, the Commission shall, based on its own assessment [...] of the seriousness of the shortcomings, adopt recommendations addressed to that Member State outlining the measures needed to remedy the serious shortcomings, and where necessary setting out the measures to be taken by the Agency to support that Member State.
5. The Commission may, taking into account the seriousness of the **weaknesses and** shortcomings identified, organise on-site visits to the Member State concerned [...].
6. The Member State concerned shall report to the Commission on the implementation of the recommendations referred to in paragraph 1 within the time-limit set in those recommendations. If after that time-limit, the Commission is not satisfied that the Member State has fully complied with those recommendations, it may **make a proposal for a Council implementing act [...]** in accordance with Article 22(1).
7. The Commission shall inform the European Parliament and the Council on a regular basis about the progress made by the Member State concerned.

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<sup>101</sup> **DE, FR, NL:** the concept of "jeopardizing the functioning of the CEAS" should be clarified.

## CHAPTER 6

### OPERATIONAL AND TECHNICAL ASSISTANCE<sup>102</sup>

#### Article 16

##### Operational and technical assistance by the Agency

1. Member States may request the Agency for assistance in implementing<sup>103</sup> their obligations with regard to the CEAS, in particular in situations of disproportionate pressure.
2. The Agency shall organise and coordinate<sup>104</sup> [...], within the limits of its mandate, the appropriate operational and technical assistance and it shall take one or more of the following measures:<sup>105</sup>
  - (a) assist Member States with the identification and registration of third-country nationals;<sup>106</sup>
  - (b) facilitate the examination of applications for international protection that are under examination by the competent national authorities;
  - (c) provide assistance to competent national authorities responsible for the examination of applications for international protection;<sup>107</sup>

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<sup>102</sup> **ES, FR, PL:** scrutiny reservations on the Chapter.

<sup>103</sup> **NL:** insert "... and applying ...".

<sup>104</sup> **EL:** insert "... in close cooperation with Member States...".

<sup>105</sup> **CZ:** "The Agency shall organise and coordinate within the limits of its mandate, the appropriate operational and technical assistance. *In this respect*, it shall take one or more of the following measures:"

<sup>106</sup> **LT, NL:** this task overlaps with the work done by the EBCG. **LT:** furthermore, this does not match the Agency's tasks as set out in Article 2. **NL:** overlaps also with national tasks. **IT:** "*when necessary, cooperate with other Agencies and Member States for identification and registration of third-country nationals*". **CZ:** suggested to add at the end "... including with identification of persons with special needs;"

<sup>107</sup> **CZ, IT:** this point should be deleted as it is a duplication of the previous one. **EL:** the difference between points b) and c) is not clear suggesting to delete point b).



- (d) facilitate Member States' initiatives of technical cooperation in processing of applications for international protection;<sup>108</sup>
  - (e) assist with the provision of information on the international protection procedure;
  - (f) advise and coordinate the setting up or provision of reception facilities by the Member States, in particular emergency accommodation, transport and medical assistance;<sup>109</sup>
  - (g) assist with the tasks and obligations set out in Regulation (EU) No XXX/XXX [the Dublin Regulation] as well as with relocation or transfer of applicants or beneficiaries of international protection within the Union;<sup>110</sup>
  - (h) provide interpretation services;
  - (i) assist Member States in ensuring that all the necessary child rights and child protection safeguards are in place, in particular as regards unaccompanied minors;
  - (j) assist Member States in ensuring that all the necessary safeguards for applicants with special procedural needs or special reception needs are in place;
  - (k) form part of the migration management support teams at hotspot areas referred to in Regulation No 2016/1624.<sup>111</sup>
3. The Agency shall finance or co-finance the activities set out in paragraph 3 from its budget in accordance with the financial rules applicable to the Agency.
4. The Executive Director shall evaluate the result of the operational and technical measures and shall transmit detailed evaluation reports to the Management Board within 60 days from the end of the implementation of those measures. The Agency shall make a comprehensive comparative analysis of those results which shall be included in the annual activity report referred to in Article 65.

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<sup>108</sup> **EL:** more clarification is needed as to what is meant here.

<sup>109</sup> **EL:** suggested "advise and *support* the setting up or *the* provision of reception facilities..." as the Agency is not competent to coordinate national authorities.

<sup>110</sup> **ES, FI, IE, PL:** scrutiny reservations. **CZ:** reservation.

<sup>111</sup> OJ L 251, 16.9.2016, p.1.

Article 17

Article 18

Article 20

**Procedure for providing operational and technical assistance**<sup>112</sup>

- 1.<sup>113</sup> Member States shall submit a request for assistance as referred to in Article 16(1) to the Executive Director<sup>114</sup> describing the situation and the purpose of the request. The request shall be accompanied by a detailed assessment of needs.
- 2.<sup>115</sup> Where the asylum and reception systems are subject to disproportionate pressure the Agency shall, at the request of a Member State or on its own recommendation and with the agreement of the Member State concerned, organise and coordinate, in close cooperation with that Member State, a comprehensive set of operational and technical measures as referred to in Article 16(2).<sup>116</sup>
3. The Executive Director shall evaluate, approve and coordinate requests for assistance and deployment of asylum support teams. The Executive Director shall immediately notify the Management Board of any such request.<sup>117</sup>

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<sup>112</sup> **FI:** scrutiny reservation on the Article.

<sup>113</sup> **CZ:** "*When its asylum and reception systems are subject to disproportionate pressure, Member States should submit....*" **NL:** "The request shall be accompanied by a detailed assessment of needs *and the measures already taken at national level by the requesting Member State.*"

<sup>114</sup> Former Article 16(2) first part (doc. 8742/16).

<sup>115</sup> **PL:** "recommendation" is not clear legally. **BE:** "Where the asylum *or* reception systems..."  
**CZ:** this paragraph should be deleted.

<sup>116</sup> Former Article 22(1) first part.

<sup>117</sup> Former Article 16(2) first sentence and Article 20(1) second sentence.

4. Each request for assistance shall be subject to a thorough and reliable assessment enabling the Agency to identify and propose a set of measures<sup>118</sup> as referred to in Article 16(2) that can meet the needs of the Member State concerned. If necessary, the Executive Director may send experts from the Agency to assess the situation of the Member State requiring assistance.<sup>119</sup>
5. The Executive Director shall, within three working days<sup>120</sup> from the date of receipt of the request or agreement of the Member State concerned as referred to in paragraph 2<sup>121</sup>, take a decision on the provision of operational and technical assistance and deployment of asylum support teams. The Executive Director shall at the same time notify the Member State requesting assistance and the Management Board of the decision in writing stating the main reasons on which the decision is based.<sup>122</sup>

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<sup>118</sup> **CZ:** "... a set of *operational and technical* measures..."

<sup>119</sup> Former Articles 16(2) and 20(1).

<sup>120</sup> **AT, NL:** the deadline is not feasible.

<sup>121</sup> **CZ:** suggests to delete the reference to the agreement in line with the deletion of paragraph 2.

<sup>122</sup> Former Article 20(2).

<sup>123</sup> **CZ:** add the following new paragraph: "*In exceptional situations and with the agreement of the Member State, the Agency may recommend the provision of operational and technical assistance to a Member State on its own initiative.*"

## Article 19

### Operational plan

- 1.<sup>124</sup> The Executive Director and the host Member State shall draw up an operational plan. The Executive Director and the host Member State, in consultation with the participating Member States<sup>125</sup>, shall agree on an operational plan within seven working days from the day on which the decision referred to in Article 20(5) is taken, or within three working days from the day of such a decision in the cases referred to in Article 20(2).<sup>126</sup>
2. The operational plan<sup>127</sup> shall be binding on the Agency, the host and participating Member States<sup>128</sup> and it shall set out in detail the conditions for the provision of the operational and technical assistance and the deployment of the asylum support teams, including the following:
  - (a) a description of the situation, with the modus operandi and objectives of the deployment, including the operational objective;
  - (b) the foreseeable duration of the deployment;
  - (c) the location in the host Member State where the asylum support teams shall be deployed;
  - (d) logistical arrangements including information on working conditions and the environment at the location where the asylum support teams shall be deployed;

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<sup>124</sup> **DK:** it is not clear as to what happens if the Executive Director and host MS cannot agree on the operational plan. **IT:** objects to a consultation with other Member States. **BG, FR, PL:** how would these consultations take place? **CZ** suggested the following wording for the paragraph: "*The Executive Director and the host Member State shall draw up an operational plan within seven working days from the day on which the decision referred to in Article 20(5) is taken*". **AT, EE, FR, RO:** the deadlines provided here are not realistic.

<sup>125</sup> **EL:** delete "in consultation with the participating Member States" as the consultations on the operational plan should be limited to the Executive Director and the host MS.

<sup>126</sup> Former Article 20(4). **EL:** delete "or within three working days from the day of..."

<sup>127</sup> **CZ:** insert "*after being endorsed by the Management Board*".

<sup>128</sup> **EL:** this first part of the paragraph can be deleted as it is superfluous.

- (e) a detailed and clear description of the tasks and special instructions for the asylum support teams or experts from the asylum reserve pool<sup>129</sup>, including the national and European databases that they are authorised to consult and the equipment that they may use or carry in the host Member State;
- (f) the composition of the asylum support teams;
- (g) the technical equipment deployed, including specific provisions such as conditions of use, transport and other logistics and financial provisions;
- (h) capacity-building activities related to the operational and technical assistance being provided;
- (i) regarding assistance with applications for international protection, including as regards the examination of such applications, specific information on the tasks that the asylum support teams may perform as well as reference to applicable national and Union law<sup>130</sup>, without prejudice to the competence of Member States to decide on individual applications;
- (j) a reporting and evaluation scheme containing benchmarks for the evaluation report and final date of submission of the final evaluation report;
- (k) modalities of cooperation with third countries, other Union agencies, bodies, offices or international organisations;
- (l) procedures whereby persons in need of international protection, victims of trafficking in human beings, unaccompanied minors and persons in a vulnerable situation are directed to the competent national authorities for appropriate assistance.

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<sup>129</sup> **CZ:** delete "or experts from the asylum reserve pool".

<sup>130</sup> **EL:** insert "... and the required qualification of the national experts, without...".

- 3.<sup>131</sup> Having regard to point (e) of paragraph 2, the host Member State shall authorise experts from the asylum support teams to consult European databases and it may authorise them to consult its national databases in compliance with Union and national law on access and consultation of those databases, and as necessary to achieve the objectives and perform the tasks outlined in the operational plan.
- 4.<sup>132</sup> Any amendments to or adaptations of the operational plan shall require the agreement of the Executive Director and the host Member State, after consultation of the participating Member States<sup>133</sup>. The Agency shall immediately send a copy of the amended or adapted operational plan to the participating Member States.
5. The Executive Director shall, after informing the host Member State, suspend or terminate the deployment of the asylum support teams if the conditions to carry out the operational and technical measures are no longer fulfilled or if the operational plan is not respected by the host Member State.<sup>134</sup>

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<sup>131</sup> **HR:** it should be defined that experts can only have access to national databases in accordance with national rules covering these databases and with the rights of personal data protection.

<sup>132</sup> **CZ** suggested the following wording: "Any amendments to or adaptations of the operational plan shall require the agreement of the Executive Director and the host Member State *and shall be subject to endorsement of the Management Board*. The Agency shall immediately send a copy of the amended or adapted operational plan to the *Management Board*."

<sup>133</sup> **EL, IT:** object to consultations with other Member States.

<sup>134</sup> Former Article 20(6).

*Article 19aNEW*

**Composition of asylum support teams<sup>135</sup>**

1. The Executive Director shall determine the composition of each asylum support team which shall be constituted in accordance with the operational plan. The asylum support teams shall consist of experts from the Agency's own staff, experts from Member States or experts seconded by Member States to the Agency. For the purpose of composing the asylum support teams, the Executive Director shall take into account the particular circumstances of the Member State requesting assistance and its assessment of needs.<sup>136</sup>
  
- 2.<sup>137</sup> On a proposal by the Executive Director, the Management Board shall decide by an absolute majority of its members with a right to vote on the profiles and the overall number of experts to be made available<sup>138</sup> for the asylum support teams. The same procedure shall apply to any subsequent changes in the profiles and the overall number of experts.<sup>139</sup>

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<sup>135</sup> **AT, EE, ES, FI, RO:** scrutiny reservations on the Article. **BG:** would prefer a single pool of experts to be deployed according to different needs rather than 2 separate procedures for deploying the same experts. **CZ:** reservation as there is no need to distinguish between the situations in Article 20 and 22; there should be a unified procedure for the deployment of national experts whereby the asylum support teams are composed of the experts from the reserve pool.

<sup>136</sup> Former Articles 20(3) and 17(2).

<sup>137</sup> **LT:** based on what criteria will the share of each MS be set? **NL:** for the sake of clarity, it could be inserted that this is for the purposes of Article 20(1). **FR:** the Council should be involved in deciding the shares of MS.

<sup>138</sup> **NL:** insert "*by each Member State*".

<sup>139</sup> Former Article 17(3).

- 3.<sup>140</sup> Member States shall contribute to the asylum support teams through the nomination of national experts who correspond<sup>141</sup> to the required profiles and numbers as decided upon by the Management Board in accordance with paragraph 2. The specific situation and available resources of the Member States shall be taken into account.<sup>142</sup>
4. As part of the asylum support teams, the Agency shall set up a list of interpreters. Member States shall assist the Agency in identifying interpreters for the list of interpreters.<sup>143</sup>
5. The Agency shall contribute to the asylum support teams with experts from its own staff, including experts employed for field work and interpreters who may be recruited in the host Member States.<sup>144</sup>

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<sup>140</sup> **LT, NL:** how are the shares of Member States decided as the reference to the specific situation is quite generic? **NL** suggested to delete the last sentence of the paragraph and insert the following new paragraph: "*3a) A Member State can request the Management Board in writing to be temporarily exempted from the obligation to contribute experts to the asylum support teams. The Management Board shall decide by a three-fourth majority on this request.*"

<sup>141</sup> **PL:** the meaning of "who corresponds" is not clear.

<sup>142</sup> Former Articles 17(4) and 18(3).

<sup>143</sup> Former Article 17(5).

<sup>144</sup> Former Article 17(8). **EL:** "The Agency shall contribute to the asylum support teams *primarily* with experts from its own staff, *experts seconded to the Agency by the Member States* including experts employed for field work and interpreters who may be recruited in the host Member States."



6.<sup>145</sup> For the purposes of deploying asylum support teams under Article 20(2) and Article 22, the Management Board shall, on a proposal of the Executive Director, set up an asylum reserve pool which shall constitute a reserve of experts placed at the immediate disposal of the Agency. For that purpose, each Member State shall, on a yearly basis, make available to the Agency a number of experts. The Management Board shall, on a proposal of the Executive Director, decide by a three-fourths majority of members with a right to vote on the profiles of experts and on the share that each Member State shall contribute to constitute an asylum reserve pool of not less than 500 persons.<sup>146</sup> The same procedure shall apply to any subsequent changes in the profiles and the overall number of experts. Each Member State shall be responsible for its contribution to the number of experts as defined by the decision of the Management Board.<sup>147</sup>

### *19B NEW Deployment of asylum support teams*<sup>148</sup>

1. The Agency shall deploy asylum support teams to Member States to provide operational and technical assistance in accordance with Articles 20(1), 20(2), 21 and 22.<sup>149</sup>

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<sup>145</sup> **PT:** scrutiny reservation on the paragraph. **NL:** the reserve pool should be set up and agreed upon in this Regulation. **DE:** the Regulation should include a binding definition of MS' total share in the reserve pool. **EL:** the meaning of the last sentence of the paragraph is not clear. **IE:** a reference similar to the one in paragraph 3 concerning the specific situation and available resources of a MS should be included here as well. **LV:** reservation on the paragraph, the contribution of each MS has to be proportionate and should not affect the capabilities of a MS to act. **CZ:** there should be a clear definition or method concerning the calculation of the share of each MS; the last sentence of the paragraph should be deleted.

<sup>146</sup> **NL:** "The Management Board shall, on a proposal of the Executive Director, decide by a three-fourths majority of members with a right to vote on the profiles of experts and *on the overall number of experts in the* asylum reserve pool of not less than 500 persons. The same procedure shall apply to any subsequent changes in the profiles and the overall number of experts. Each Member State shall be responsible for its contribution to the number of experts *according to the distribution key as set out in Annex I to this Regulation*".

<sup>147</sup> Former Articles 18(1) and 18(2). **EL:** requests clarification regarding the meaning and purpose of the last sentence of the paragraph.

<sup>148</sup> **AT, CZ, EE, ES, FI, IT, PT, RO:** scrutiny reservations on the Article.

<sup>149</sup> Former Article 17(1).

- 2.<sup>150</sup> As soon as the operational plan is agreed, the Executive Director shall request the Member States to deploy the experts within no more than seven working days. The Executive Director shall indicate the number and profiles required from the Member States. That information shall be provided, in writing, to the national contact points and shall specify the scheduled date of deployment. A copy of the operational plan shall also be sent to the national contact points.<sup>151</sup>
3. Member States shall make their own experts or experts seconded to the Agency<sup>152</sup> available for deployment at the request of the Agency unless they are faced with an exceptional situation substantially affecting the discharge of national tasks<sup>153</sup>.
4. For the purposes of Article 20(2)<sup>154</sup> and Article 22, the Executive Director shall deploy asylum support teams from the asylum reserve pool as referred to in Article 19aNEW(6). The deployment of experts from the asylum reserve pool shall take place within five working days<sup>155</sup> from when the operational plan is agreed upon as referred to in Article 19(1) and Article 22(2).<sup>156</sup>

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<sup>150</sup> **AT, EE, FR, IE, RO:** the deadline provided here is too short. **CZ:** the deadline of 7 days is not realistic suggesting 2 weeks instead. **NL:** the deadline should be 10 days.

<sup>151</sup> Former Article 20(5).

<sup>152</sup> **EL:** why are the experts seconded to the Agency not eligible for deployment as Agency's staff?

<sup>153</sup> Former Article 17(6).

<sup>154</sup> **CZ:** delete the reference to Article 20(2).

<sup>155</sup> **DE:** scrutiny reservation on the five working days. **RO:** there should be more flexibility regarding the deadline for deployment of experts. **AT, DE, FR, IE, NL:** this is too short a deadline. **CZ, NL** suggested ten working days.

<sup>156</sup> Former Article 22(2).

- 5.<sup>157</sup> Member States shall, without due delay, make the experts from the asylum reserve pool available for deployment at the request of the Agency. Where the information analysis shows that a Member State is faced with an exceptional situation substantially affecting the discharge of national tasks, its contribution to the deployment of an asylum reserve pool for the purposes of Article 20(2) shall be half of its contribution fixed by the decision of the Management Board referred to in Article 19aNEW(6). The host Member State where experts from the asylum reserve pool are deployed shall not deploy experts forming part of its fixed contribution to that pool<sup>158</sup>. If there is a shortage of experts for deployment in the asylum reserve pool, the Management Board shall, on a proposal of the Executive Director, decide how that shortage is to be filled<sup>159</sup>.
- 6.<sup>160</sup> The duration of deployment shall be determined by the home Member State but it shall not be less than 30 days, unless the particular operational and technical assistance is required for a shorter duration.<sup>161</sup>

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<sup>157</sup> **PT:** scrutiny reservation on the paragraph. **NL:** who would be in charge of the information analysis? **PL:** on the basis of what criteria would it be decided that there is an exceptional situation? **CZ:** there should be a complete exemption from sending experts in this case. **DE:** scrutiny reservation on this issue as in that situation it might be difficult for a MS to provide even half of its contribution suggesting to use the wording similar to Article 20(3) of the EBCG Regulation. **CZ, IE:** there should be a full derogation from the obligation to send experts in this case. **PL:** the reduction by half would not always be enough. **DE:** scrutiny reservation on this issue as in that situation it might be difficult for a MS to provide even half of its contribution. **LV:** reservation on the reduction by half. **NL:** delete the second sentence of the paragraph suggesting to insert the following new paragraph: "*5a) A Member State can request the Management Board in writing to be temporarily exempted from the obligation to contribute experts to the asylum reserve pool for the purposes of Article 20(2). The Management Board shall decide by a three-fourths majority on this request.*"

<sup>158</sup> **EL:** this sentence could be deleted as it states the obvious.

<sup>159</sup> **AT:** delete the last sentence of the paragraph as it is vague and has no added value.

<sup>160</sup> **EL:** the duration of deployment should be at least 60 days.

<sup>161</sup> Former Articles 17(7) and 18(3).

### Migration management support teams

1. Where a Member State requests operational and technical reinforcement by migration management support teams as referred to in Article 18 of Regulation No 2016/1624 or where migration management support teams are deployed at hotspot areas as referred to in Article 19 of Regulation No 2016/1624, the Executive Director shall ensure coordination of the Agency's activities in the migration management support teams with the Commission and with other relevant Union agencies, in particular, the European Border and Coast Guard Agency.
2. The Executive Director shall, as appropriate<sup>162</sup>, launch the procedure for deployment of asylum support teams. The operational and technical reinforcement provided by the asylum support teams in the framework of the migration management support teams may include:
  - (a) assistance in screening of third-country nationals, including their identification,<sup>163</sup> registration, and where requested by Member States, their fingerprinting<sup>164</sup>;
  - (b) the registration of applications for international protection and, where requested by Member States, the examination of such applications;
  - (c) the provision of information on asylum procedures, including relocation and specific assistance to applicants or potential applicants that could be subject to relocation.

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<sup>162</sup> **NL:** suggests the following wording for the paragraph " The Executive Director shall, as appropriate *and in accordance with the procedures described for the situation in Article 20(2)*, launch the procedure for deployment of asylum support teams ."

<sup>163</sup> **CZ:** insert "*identification of persons with special needs*".

<sup>164</sup> **EL:** training on fingerprinting should be provided by the Agency if the asylum support teams are tasked to assist with it.

Article 22

**Disproportionate pressure on the asylum and reception system**<sup>165</sup>

- 1.<sup>166</sup> Where the asylum or reception systems are subject to disproportionate pressure that places exceptionally heavy and urgent demands on those systems and which are rendered ineffective to the extent of jeopardising the functioning of the CEAS because<sup>167;168</sup>
- (a) a Member State does not take sufficient action to address that pressure, including by not requesting the Agency for operational and technical assistance or not agreeing to a recommendation of the Agency for such assistance; or
  - (b) a Member State does not comply with the Commission's recommendations referred to in Article 15(3),
- the Council, on the basis of a proposal from the Commission, may adopt without delay a decision by means of an implementing act, identifying one or more of the measures set out in Article 16(2) to be taken by the Agency to support the Member State concerned and requiring the Member State to cooperate with the Agency in the implementation of those measures<sup>169</sup>.
2. The Executive Director shall, within two working days from the date of adoption of the Council decision, determine the actions to be taken for the practical execution of the measures identified in the Council decision. In parallel, the Executive Director shall draw up the operational plan and submit it to the Member State concerned. The Executive Director and the Member State concerned shall agree on the operational plan within three working days from the date of its submission.<sup>170171</sup>

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<sup>165</sup> **EE, ES, FI, FR, HU, IT, MT, PL:** scrutiny reservations on the Article. **CZ, RO:** reservations on the Article. **RO:** the request should come from the MS under pressure.

<sup>166</sup> **PL:** who would decide what disproportionate pressure is and who would decided in cases referred to in points a) and b). **ES:** doubts as to how to determine a situation of disproportionate pressure.

<sup>167</sup> **EL:** replace "because" by "*and*".

<sup>168</sup> Former Articles 22(1) and 22(3).

<sup>169</sup> **EL:** delete "and requiring the Member State to cooperate with the Agency in the implementation of those measures" as the Council is free to decide on the measures to be taken.

<sup>170</sup> **NL:** delete the text starting from "In parallel..." as it duplicates Article 19(1).

<sup>171</sup> Former Article 22(4).

- 3.<sup>172</sup> The Agency shall, without delay and in any case within five working days from date of establishment of the operational plan, deploy the necessary experts from the asylum reserve pool, as well as experts from its own staff. Where necessary, additional asylum support teams shall be deployed as necessary and in any case within seven working days from the deployment of experts from the asylum reserve pool.<sup>173</sup>
4. The Member State concerned shall comply with the Council decision. For that purpose, it shall immediately cooperate with the Agency and take the necessary action to facilitate the implementation of that decision and the practical execution of the measures set out in that decision and in the operational plan.<sup>174</sup>
- 5.<sup>175</sup> For the purposes of this Article, the Member States shall make available the experts from the asylum reserve pool as determined by the Executive Director and may not invoke the situation referred to in Article 19bNEW(3). The host Member State where experts from the asylum reserve pool are deployed shall not deploy experts forming part of its fixed contribution to that pool.<sup>176</sup>

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<sup>172</sup> **CZ:** the deadlines should be ten and fourteen working days respectively. **EL, RO:** the deadlines are too short. **NL:** the paragraph can be deleted as it duplicates paragraph 4 of Article 19B NEW.

<sup>173</sup> Former Article 22(5).

<sup>174</sup> Former Article 22(6).

<sup>175</sup> **LV:** reservation on this paragraph concerning the compulsory deployment of experts. **CZ:** delete "and may not invoke the situation referred to in Article 19bNEW(3)." **NL:** the paragraph can be deleted as it duplicates paragraph 5 of Article 19B NEW.

<sup>176</sup> Former Article 22(7). **EL:** delete the last sentence of the paragraph as it states the obvious.

## Article 23

### Technical equipment

1. Without prejudice to the obligation of <sup>177</sup>Member States to supply the necessary facilities and equipment<sup>178</sup> for the Agency to be able to provide the required operational and technical assistance, the Agency may deploy its own equipment to Member States to the extent that this may be needed by the asylum support teams and insofar as this may complement equipment already made available by the Member States or other Union agencies.
2. The Agency may acquire or lease technical equipment by decision of the Executive Director, in consultation with the Management Board. Any acquisition or leasing of equipment shall be preceded by a thorough needs and cost/benefit analysis. Any such expenditure shall be provided for in the Agency's budget as adopted by the Management Board and in accordance with the financial rules applicable to the Agency.

## Article 24

### National contact point

Each Member State shall appoint a national contact point for communication with the Agency<sup>179</sup> on all matters relating to the operational and technical assistance referred to in Articles 16 and 22.

## Article 25

### Coordinating officer of the Agency

1. The Agency shall ensure the operational implementation of all the organisational aspects, including the presence of staff members of the Agency, deployment of asylum support teams throughout<sup>180</sup> the provision of operational and technical assistance.

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<sup>177</sup> EL, NL: "*host* Member States"

<sup>178</sup> IT: "Without prejudice to the obligation of Member States *to provide necessary support to the Agency...* "

<sup>179</sup> EL: insert "*including*".

<sup>180</sup> NL: "deployment of asylum support teams *and* the provision of .."

2. The Executive Director shall appoint one or more experts from the staff of the Agency to act or to be deployed as a coordinating officer for the purposes of paragraph 1. The Executive Director shall notify the host Member State of such designations.
3. The coordinating officer shall foster cooperation and coordination between the host Member State and the participating Member States. In particular, the coordinating officer shall:
  - (a)<sup>181</sup> act as an interface between the Agency, the host Member State and experts of the asylum support teams, providing assistance, on behalf of the Agency, on all issues relating to their conditions of deployment;
  - (b) monitor the correct implementation of the operational plan<sup>182</sup>;
  - (c) act on behalf of the Agency on all aspects of the deployment of the asylum support teams and report to the Agency on all those aspects;
  - (d) report to the Executive Director where the operational plan is not adequately implemented.
4. The Executive Director may authorise the coordinating officer to assist in resolving any disputes concerning the implementation of the operational plan and the deployment of asylum support teams .
5. In discharging his or her duties, the coordinating officer shall take instructions only from the Executive Director.

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<sup>181</sup> **NL:** suggests the order of the points in the following way: c), a), b) and d).

<sup>182</sup> **EL:** "... in close cooperation with the host Member State."



Article 26

**Civil liability**<sup>183</sup>

1. Where experts of an asylum support team or from the asylum reserve pool are operating in a host Member State, that Member State shall be liable in accordance with its national law for any damage caused by them during their operations.<sup>184</sup>
2. Where such damage is caused by gross negligence or wilful misconduct, the host Member State may address the home Member State or the Agency to obtain any sums it has paid to the victims or persons entitled on their behalf from the home Member State or the Agency.
3. Without prejudice to the exercise of its rights vis-à-vis third parties, each Member State shall waive all its claims against the host Member State or any other Member State for any damage it has sustained, except in cases of gross negligence or wilful misconduct.
4. Any dispute between Member States or with the Agency relating to the application of paragraphs 2 and 3 of this Article which cannot be resolved by negotiations between them shall be submitted by them to the Court of Justice of the European Union in accordance with Article 273 of the Treaty.
5. Without prejudice to the exercise of its rights vis-à-vis third parties, the Agency shall meet costs relating to damage caused to the Agency's equipment during deployment, except in cases of gross negligence or wilful misconduct.

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<sup>183</sup> **EL:** scrutiny reservation on the Article.

<sup>184</sup> **EL:** Where experts of an asylum support team or from the asylum reserve pool are operating in a host Member State, *they* shall be liable in accordance with *the host Member State's* national law for any damage caused by them during their operations."

Article 27

**Criminal liability**

During the deployment of an asylum support team or experts from the asylum reserve pool, those experts shall be treated in the same way as officials of the host Member State with regard to any criminal offences that might be committed against them or by them.

Article 28

**Costs**

1. The Agency shall meet the costs incurred by Member States when they make their experts available for deployment to asylum support teams, in particular:
  - (a) travel from the home Member State to the host Member State and from the host Member State to the home Member State;<sup>185</sup>
  - (b) costs related to vaccinations;
  - (c) costs related to special insurance needs;
  - (d) costs related to health care;
  - (e) daily subsistence allowances, including accommodation costs;
  - (f) costs related to the Agency's technical equipment;
  - (g) experts' fees.<sup>186</sup>

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<sup>185</sup> **IT:** "travel from the home Member State to the host Member State and *vice versa and travel within the host Member State.*" **ES:** the cost of transportation within the host MS during missions should also be included. **NL:** "travel from the home Member State to the host Member State, from the host Member State to the home Member State and *within the host Member State;*"

<sup>186</sup> **IT:** " *other experts' fees incurred for the purpose of deployment.*" **FR:** experts' fees within a Member State should be covered and whenever there is a modification of a place of deployment. **DE:** scrutiny reservation.

2. The Management Board shall establish detailed rules and update them as necessary as regards the payment of the daily subsistence allowance of experts deployed by Member States to the asylum support teams.

## CHAPTER 7

### INFORMATION EXCHANGE AND DATA PROTECTION

#### *Article 29*

##### **Information exchange systems**

- 1.<sup>187</sup> The Agency **shall** [...] take all necessary measures to facilitate the exchange of information relevant to its tasks with the Commission and the Member States and, where appropriate, the relevant Union **bodies, offices and** agencies.
2. The Agency shall<sup>188</sup>, in cooperation with the European agency for the operational management of large-scale IT systems in the area of freedom, security and justice established by Regulation (EU) No 1077/2011,<sup>189</sup> develop and operate an information system capable of exchanging classified information with the actors **referred to in paragraph 1**, as well as personal data referred to in Articles 31 and 32 in accordance with Council Decision 2013/488<sup>190</sup> and Commission Decision (EU, Euratom) 2015/444.<sup>191</sup>

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<sup>187</sup> **SE:** scrutiny reservation regarding the wording "all necessary measures" which gives the Agency a broad mandate. **LV:** what does "may take all necessary measures" mean? **DE, PL:** which powers are conferred to the Agency here and what does facilitation imply? **DE:** drafting should be more precise and clear. **CZ, LV, PL:** question the added value of yet another information exchange mechanism referring to the costs.

<sup>188</sup> **CZ:** "may".

<sup>189</sup> Regulation (EU) No 1077/2011 of the European Parliament and of the Council of 25 October 2011 establishing a European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice (OJ L 286, 1.11.2011, p. 1).

<sup>190</sup> Council Decision 2013/488/EU of 23 September 2013 on the security rules for protecting EU classified information (OJ L 274, 15.10.2013, p. 1).

<sup>191</sup> Commission Decision 2015/444 (EU, Euratom) 2015/444 of 13 March 2015 on the security rules for protecting EU classified information (OJ L 72, 17.3.2015, p. 53).

## Article 30

### Data Protection

1. The Agency shall apply Regulation (EC) No 45/2001 when processing personal data.
2. The Management Board shall establish measures for the application of Regulation (EC) No 45/2001 by the Agency, including those concerning the appointment of a Data Protection Officer of the Agency. Those measures shall be established after consultation of the European Data Protection Supervisor.
3. Without prejudice to Articles 31 and 32, the Agency may process personal data for **the necessary** administrative purposes.<sup>192</sup>
4. **Without prejudice to Article 35(4)**, the transfer of personal data processed by the Agency and the onward transfer by Member States to authorities of third countries or third parties, including international organisations, of personal data processed in the framework of this Regulation shall be prohibited.

## Article 31

### Purposes of processing personal data<sup>193</sup>

1. The Agency may process personal data only for the following purposes:
  - (a) performing its tasks of providing operational and technical assistance in accordance with Articles 16(2) and 21(2);
  - (b) when carrying out case sampling for the purposes of the monitoring exercise referred to in Article 13;<sup>194</sup>

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<sup>192</sup> **HR:** it should be clarified in a Recital what these administrative purposes are and whose data would be processed for that purpose (employees', officials' and /or asylum seekers').

<sup>193</sup> **SE:** scrutiny reservation. **FR:** reservation on the Agency being able to use personal data. **FI:** what is the relationship with Article 32 and under what circumstances can the Agency process personal data?

<sup>194</sup> **PL:** scrutiny reservation related to monitoring.

- (c) when handling applications for international protection from children or vulnerable persons, upon request of Member States, as referred to in Article 13(2) and Article 16(2)(b) and (c);<sup>195</sup>
  - (d) facilitating the exchange of information with Member States, the European [...] **Border and Coast Guard** Agency, Europol or Eurojust in accordance with Article 36 and in the framework of information obtained when performing the tasks listed in Article 21(2);<sup>196</sup>
  - (e) analysing information on the situation of asylum in accordance with Article 4;
2. Any such processing of personal data shall respect the principle of proportionality and be strictly limited to personal data necessary for the purposes referred to in paragraph 1.
  3. Member States or other Union **bodies, offices and** agencies providing personal data to the Agency may<sup>197</sup> only transfer data to the Agency for the purposes referred to in paragraph 1. Any further processing of retained personal data for purposes other than those referred to in paragraph 1 shall be prohibited.
  - 4.<sup>198</sup> Member States or other Union **bodies, offices and** agencies [...] **shall** indicate, at the moment of transferring personal data, any restriction on access or use, in general or specific terms, including as regards transfer, erasure or destruction. Where the need for such restriction becomes apparent after the transfer provision of information, they shall inform the Agency accordingly. The Agency shall comply with such restrictions.

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<sup>195</sup> **DE:** the reference to handling of applications is not correct. **NL:** asking why children and vulnerable persons are set out as a separate category suggesting that they are covered by point a).

<sup>196</sup> **DE:** facilitation is not about objective data processing.

<sup>197</sup> **DE:** replace with "*shall*".

<sup>198</sup> **HR:** such a provision on general prohibition of onward transfer of personal data is inappropriate and it should be aligned with Article 9 of the Regulation (EU) 45/2001, or, if applicable, with the corresponding Articles of the Directive 95/46/EC, Regulation (EU) 2016/679 or Directive (EU) 2016/680.

**Processing of personal data collected when providing operational and technical assistance<sup>199</sup>**

- 1.<sup>200</sup> The use by the Agency of personal data collected by or transmitted to it by the Member States or by its own staff when providing operational and technical assistance to Member States shall be limited to the name<sup>201</sup>, date of birth, gender, **age, sexual orientation, gender identity**, nationality, profession,<sup>202</sup> [...] education, **family links**, fingerprints and digitised photograph of third-country nationals.
2. Personal data referred to in paragraph 1 may be processed by the Agency in the following cases:
- (a) where necessary for the identification and registration referred to in Article 16(2)(a);
  - (b) where necessary to facilitate the examination of applications for international protection that are under examination by the competent national authorities as referred to in Article 16(2)(b);
  - (c) where necessary to provide assistance to competent national authorities responsible for the examination of applications for international protection as referred to in Article 16(2)(c);
  - (d) where necessary to assist **with the tasks and obligations set out in Regulation (EU) No XXX/XXX [the Dublin Regulation]**, [...] relocation or transfer of **applicants or** beneficiaries of international protection within the Union as referred to in Article 16(2)(g);
  - (e) where transmission to the European **Border and Coast Guard** Agency [...], Europol or Eurojust is necessary for the performance of their tasks in accordance with their respective mandates and in accordance with Article 30;

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<sup>199</sup> **SE**: scrutiny reservation.

<sup>200</sup> **HR**: reference should also be made to all other relevant data collected by a MS according to its national legislation.

<sup>201</sup> **DE**: include both the first name and the surname.

<sup>202</sup> **IE**: why is "profession" included?

- (f) where transmission to the Member States' authorities or immigration and asylum services is necessary for use in accordance with national legislation and national and Union data protection rules;
  - (g) where necessary for analysis of information on the situation of asylum.
3. The personal data shall be deleted as soon as they have been transmitted to the European **Border and Coast Guard** Agency [...], Europol or Eurojust or to the competent authorities of Member States or used for information analysis on the situation of asylum. The storage period shall in any case not exceed 30 days after the date on which the Agency collects or receives those data. In the result of the information analysis on the situation of asylum, data shall **be anonymised** [...].

## **CHAPTER 8**

### **COOPERATION BY THE AGENCY**

#### *Article 33*

##### **Cooperation with Denmark**

The Agency shall facilitate operational cooperation with Denmark, including the exchange of information and best practices in matters covered by its activities.

#### *Article 34*

##### **Cooperation with associate countries**

1. The Agency shall be open to the participation of Iceland, Liechtenstein, Norway and Switzerland.

2. The nature, extent and manner in which those countries are to participate in the Agency's work shall [...] be defined by relevant working arrangements. Such arrangements shall include provisions relating to participation in initiatives undertaken by the Agency, financial contributions, participation in the meetings of the Management Board and staff. As regards staff matters, those arrangements shall, in any event, comply with the Staff Regulations.

*Article 35*

**Cooperation with third countries<sup>203</sup>**

- 1.<sup>204</sup> In matters related to its activities and, to the extent required for the fulfilment of its tasks, the Agency shall facilitate and encourage operational cooperation<sup>205</sup> between Member States and third countries, within the framework of the Union's external relations policy, including with regard to the protection of fundamental rights, and in cooperation with the European External Action Service. The Agency and the Member States shall promote and comply with norms and standards<sup>206</sup> equivalent to those set by Union legislation, including when carrying out activities on the territory of those third countries.
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, in particular with a view to promoting Union standards on asylum and assisting third countries as regards expertise and capacity building for their own asylum and reception systems as well as implementing regional development and protection programmes and other actions. The Agency may carry out such cooperation within the framework of working arrangements concluded with those authorities in accordance with Union law and policy. **The Management Board shall decide on the working arrangements which shall be subject to prior approval of the Commission.** The Agency [...] shall inform the European Parliament **and the Council of any such arrangements.**

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<sup>203</sup> **CY:** scrutiny reservation regarding national competence in these matters.

<sup>204</sup> **DE:** there should be stronger involvement of MS and the Council in this.

<sup>205</sup> **PL:** it is not clear whether activities in third countries are referred to here.

<sup>206</sup> **EL:** more clarification required as to the norms and standards referred to here.



- 3.<sup>207</sup> The Agency may, with the agreement of the host Member State, invite officials from third countries to observe the operational and technical measures outlined in Article 16(3), where their presence does not jeopardise the achievement of objectives of those measures, and where it may contribute to improving cooperation and the exchange of best practices.
4. The Agency shall coordinate actions on resettlement taken [...] by the Union **and it may, at the request of Member States, assist them in their actions on resettlement.**

**As regards the actions taken by the Union, the Agency shall in particular assist Member States with the implementation of resettlement, coordinate operational cooperation between Member States, gather and facilitate the exchange of information, [...] monitor the reporting on resettlement to Member States and support Member States with capacity building on resettlement.**

The Agency may also, subject to the agreement of the third country and in agreement with the Commission, coordinate any such exchange of information or other action between Member States and a third country, in the territory of that third country.

- 5.<sup>208</sup> The Agency shall, **where appropriate**, 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.
6. 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.

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<sup>207</sup> **AT:** the Management Board should be involved here.

<sup>208</sup> **EL:** it is not clear what kind of international agreements are referred to here pointing out that the Agency should have no role in the implementation of readmission agreements. **DE:** mixed agreements should also be covered. **AT:** reservation on the obligation.

## Article 36

### Cooperation with Union agencies, bodies and offices

- <sup>209</sup> The Agency shall cooperate with agencies, bodies and offices of the Union having activities relating to its field of activity, in particular the European Union Agency for Fundamental Rights and the European **Border and Coast Guard** Agency [...] and which are competent in matters covered by this Regulation.
- Such cooperation shall take place within the framework of working arrangements concluded with those bodies, after having received the Commission's approval. The Agency shall inform the European Parliament **and the Council** of any such arrangements.
- The cooperation shall create synergies among the relevant Union bodies and it shall prevent any duplication of effort in the work carried out by each one of them pursuant to their mandate.

## Article 37

### Cooperation with the UNHCR and other international organisations

The Agency shall cooperate with international organisations, in particular UNHCR, in areas governed by this Regulation, within the framework of working arrangements concluded with those bodies, in accordance with the Treaty and the provisions on the competence of those bodies. The Management Board shall decide on the working arrangements which shall be subject to prior approval of the Commission.<sup>210</sup>

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<sup>209</sup> **PL:** Europol should be included in the list.

<sup>210</sup> **SE:** it should be guaranteed that there are no overlaps with the work of UNHCR.

## CHAPTER 9

### ORGANISATION OF THE AGENCY

#### *Article 38*

##### **Administrative and management structure**

The Agency's administrative and management structure shall comprise:

- (a) a Management Board, which shall exercise the functions set out in Article 40;
- (b) an Executive Director, who shall exercise the responsibilities set out in Article 46;
- (c) a Deputy Executive Director, as established in Article 47.

#### *Article 39*

##### **Composition of the Management Board**

1. The Management Board shall be composed of one representative from each Member State and two representatives of the Commission, which shall have the right to vote.
2. The Management Board shall include one representative of UNHCR, without the right to vote.
3. Each member of the Management Board shall have an alternate. The alternate shall represent the member in his or her absence.

4. Members of the Management Board and their alternates shall be appointed in the light of their knowledge **and expertise** in the field of asylum, taking into account relevant managerial, administrative and budgetary skills. All 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. All parties shall aim to achieve a balanced representation between men and women on the Management Board.
5. The term of office for members of the Management Board shall be four years. That term shall be extendable. On the expiry of their term of office or in the event of their resignation, members shall remain in office until their appointments are extended or until they are replaced.

*Article 40*

**Functions of the Management Board**

1. The Management Board shall **be the Agency's planning and monitoring body. It shall give general orientation for the Agency's activities and ensure that the Agency performs its tasks. It shall, in particular:**
  - (a) [...]
  - (b) adopt the annual budget of the Agency by a majority of two-thirds of members entitled to vote and exercise other functions in respect of the Agency's budget pursuant to Chapter 10;
  - (c) adopt a consolidated annual activity report on the Agency's activities and send it, by 1 July each year, to the European Parliament, the Council, the Commission and the Court of Auditors. The consolidated annual activity report shall be made public;

- (d) adopt the financial rules applicable to the Agency in accordance with Article 53;<sup>211</sup>
- (e) take all decisions for the purpose of fulfilling the Agency's mandate as laid down in this Regulation;
- (f) adopt an anti-fraud strategy, proportionate to the risk of fraud taking into account the costs and benefits of the measures to be implemented;
- (g) adopt rules for the prevention and management of conflicts of interest in respect of its members;
- (h) adopt and regularly update the communication and dissemination plans referred to in Article 2(3), based on an analysis of needs;
- (i) adopt its rules of procedure;<sup>212</sup>
- (j) exercise, in accordance with paragraph 2, with respect to the staff of the Agency, the powers conferred by the Staff Regulations on the Appointing Authority and by the Conditions of Employment of Other Servants on the Authority Empowered to Conclude a Contract of Employment<sup>213</sup> (appointing authority);
- (k) adopt appropriate implementing rules for giving effect to the Staff Regulations and the Conditions of Employment of Other Servants in accordance with Article 110 of the Staff Regulations;
- (l) appoint the Executive Director and Deputy Executive Director, exercise disciplinary authority over him or her and, where necessary, extend his or her term of office or remove him or her from office in accordance with Articles 45 and 47;

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<sup>211</sup> **PL**: scrutiny reservation.

<sup>212</sup> **IT** suggested to add "... including the Executive Board, its composition and functions".

<sup>213</sup> Regulation (EEC, Euratom, ECSC) No 259/68 of the Council of 29 February 1968 laying down the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Communities and instituting special measures temporarily applicable to officials of the Commission (OJ L 56, 4.3.1968, p. 1)

- (m) adopt an annual report on the situation of asylum in the Union in accordance with Article 65. That report shall be presented to the European Parliament, the Council and the Commission;
- (n) take all decisions on the development of the information systems provided for in this Regulation, including the information portal referred to Article 8(2)(b);
- (o) adopt the detailed rules for applying Regulation (EC) No 1049/2001 in accordance with Article 58;
- (p) adopt the Agency's staff policy in accordance with Article 55;
- (q) adopt [...] **each year the Agency's programming document in accordance with Article 41;**
- (r) take all decisions on the establishment of the Agency's internal structures and, where necessary, their modification;
- (s) 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);
- (t) adopt the operational standards, indicators, guidelines and best practices developed by the Agency in accordance with Article 12(2);<sup>214</sup>
- (u) endorse the common analysis concerning country of origin information and any review of that common analysis in accordance with Article 10(2) and (3);<sup>215</sup>
- (v) set the programme for monitoring **the operational and technical application of the [...] CEAS** in accordance with Article 14(1);<sup>216</sup>

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<sup>214</sup> **FR:** reservation on the control functions of the Agency.

<sup>215</sup> **PL:** scrutiny reservation.

<sup>216</sup> **PL:** scrutiny reservation. **FR, LV:** reservations on the control functions of the Agency.

- (w) [...]
- (x) adopt the recommendations following a monitoring exercise in accordance with Article 14(3);<sup>217</sup>
- (y) set up and decide on the profiles and overall numbers of experts to be made available for the asylum support teams **including for the asylum reserve pool** in accordance with Article [...] **19aNEW(2) and 19aNEW(6)**;<sup>218</sup>
- (z) [...]
- (aa) adopt a strategy for relations with third countries or international organisations concerning matters for which the Agency is competent, as well as a working arrangement with the Commission for its implementation;
- (bb) authorise the conclusion of working arrangements in accordance with Article 35.

2. <sup>219</sup> 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 and on Article 6 of the Conditions of Employment of Other Servants, 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.

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<sup>217</sup> **PL**: scrutiny reservation.

<sup>218</sup> **LV**: reservation.

<sup>219</sup> **IT**: what delegated powers are meant here?

- 3.<sup>220</sup> The Management Board may establish an Executive Board, composed of the Chairperson of the Management Board, the two representatives of the Commission to the Management Board and three other members of the Management Board, to assist it and the Executive Director with regard to the preparation of decisions, the annual and multi-annual programming and activities to be adopted by the Management Board. When necessary, [...] the Executive Board may take certain **urgent** provisional decisions on behalf of the Management Board, in particular on administrative management matters. **For the purposes of establishing the Executive Board, the Management Board shall establish its rules of procedure.**

*Article 41*

**Multi-annual programming and annual work programmes**

1. By 30 November each year, the Management Board shall adopt, **by a majority of two-thirds of members entitled to vote**, a programming document containing the multi-annual and annual programming, based on a draft put forward by the Executive Director, taking into account the opinion of the Commission and for the multi-annual programming, after consulting the European Parliament. The Management Board shall forward it to the European Parliament, the Council and the Commission.

The programming document shall become definitive after final adoption of the general budget and if necessary shall be adjusted accordingly.

A draft version of the programming document shall be sent to the European Parliament, the Council and the Commission no later than 31 January each year as well as any later updated version of that document.

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<sup>220</sup> **EL:** serious concerns regarding the setting up of an Executive Board whose competencies are extremely broad and unclear. **DE** (scrutiny reservation): doubts as to the role of the Executive Board. **AT:** scrutiny reservation on the number of members of the Executive Board. **ES:** how will the representatives of MS to the Executive Board be selected what are the urgent decisions on administrative matters that the Executive Board should take? It should be made clear that it's task is to assist administratively. **IT** suggested to add "... according to the rules of procedure laid down in paragraph 1". **NL:** why should there be 2 people from the Commission?



2. The multi-annual programming shall set out the overall strategic programming in the medium and long-term including objectives, expected results and performance indicators. It shall also set out resource programming including multi-annual budget and staff.

The multi-annual programming shall set the strategic areas of intervention and explain what needs to be done to achieve the objectives. It shall include the strategy for relations with third countries or international organisations referred to in Articles 34<sup>221</sup> and 37, respectively, and the actions linked to that strategy, as well as specification of associated resources.

The multi-annual programming shall be implemented by means of annual work programmes and it shall be updated annually. The multi-annual programming shall be updated where appropriate, and in particular to address the outcome of the evaluation referred to in Article 66.

3. The annual work programme shall comprise detailed objectives and expected results including performance indicators. It shall also contain a description of the actions to be financed and an indication of the financial and human resources allocated to each activity, in accordance with the principles of the activity-based budgeting and management. The annual work programme shall be consistent with the multi-annual programming referred to in paragraph 2. It shall clearly indicate the tasks that have been added, changed or deleted in comparison with the previous financial year.
4. The Management Board shall amend the adopted annual work programme when a new task is given to the Agency.

Any substantial amendment to the annual work programme shall be adopted by the same procedure as 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.

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<sup>221</sup> **IT**: reference should be made to Article 35 instead.

*Article 42*

**Chairperson of the Management Board**

1. The Management Board shall elect a Chairperson and a Deputy Chairperson from 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 Board with voting rights.

The Deputy Chairperson shall automatically replace the Chairperson if he or she is prevented from attending to his or her duties.

2. The term of office of the Chairperson and the Deputy Chairperson shall be four years. Their term of office may be renewed once. If, however, their membership of the Management Board ends at any time during their term of office, their term of office shall automatically expire on that date.

*Article 43*

**Meetings of the Management Board**

1. The Chairperson shall convene meetings of the Management Board.
2. The Executive Director shall take part in the deliberations, without the right to vote.
- 3.<sup>222</sup> The representative of UNHCR shall not take part in the meeting when the Management Board performs the functions laid down in points **(f), (g), (j), (k)**, (l), (o), (p), (q) and (r) of Article 40(1) and in Article 40(2), and when the Management Board decides to make financial resources available for financing UNHCR activities enabling the Agency to benefit from the its expertise as provided for in Article 49.

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<sup>222</sup> **AT:** references to points f) and s) of Article 40(1) should be added. **IT:** why should UNHCR be present when administrative matters of the Agency are discussed?

4. The Management Board shall hold at least two ordinary meetings a year. In addition, it shall meet on the initiative of its Chairperson, at the request of the Commission<sup>223</sup>, or at the request of one-third of its members.
5. The Management Board may invite any person whose opinion may be of interest to attend its meetings as an observer.
6. Denmark shall be invited to attend the meetings of the Management Board.
7. The members and the alternates of the Management Board may, subject to the provisions of its Rules of Procedure, be assisted at the meetings by advisers or experts.
8. The Agency shall provide the secretariat for the Management Board.

*Article 44*

**Voting rules of the Management Board<sup>224</sup>**

1. Unless otherwise provided, the Management Board shall take its decisions by **an absolute** majority of its members with voting rights.
2. Each member with voting rights shall have one vote. In the absence of a member with the right to vote, his or her alternate shall be entitled to exercise his or her right to vote.
3. The Chairperson shall take part in the voting.
4. The Executive Director shall not take part in the voting.
- 4a. **Member States that do not fully participate in the acquis of the Union in the field of asylum shall not vote where the Management Board is called on to adopt operational standards, indicators, guidelines or best practices which relate exclusively to an asylum instrument of the Union by which they are not bound.**

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<sup>223</sup> **AT, FR:** why should the meeting be convened at the request of the Commission?

<sup>224</sup> **AT, FR:** why has Article 28(4) of the current Regulation been deleted?

5. The Management Board's Rules of Procedure shall establish more detailed voting arrangements, in particular the circumstances in which a member may act on behalf of another member.

#### *Article 45*

### **Executive Director**

1. The Executive Director shall be a member of staff and shall be recruited as a temporary agent of the Agency in accordance with Article 2(a) of the Conditions of Employment of Other Servants.
2. <sup>225</sup> The Executive Director shall be appointed by the Management Board from a list of candidates proposed by the Commission, following an open and transparent selection procedure. The Executive Director shall be appointed on the ground of merit and documented high-level administrative and management skills as well as senior professional experience in the field of migration and asylum.

For the purpose of concluding the contract with the Executive Director, the Agency shall be represented by the Chairperson of the Management Board.

3. Before appointment, the candidate selected by the Management Board may be invited to make a statement before the competent committee of the European Parliament and answer questions put by its members.
4. 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.
5. The Management Board, acting on a proposal from the Commission that takes into account the assessment referred to in paragraph 4, may extend the term of office of the Executive Director once for no more than five years.

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<sup>225</sup> **ES:** scrutiny reservation on the appointment of the Executive Director.

6. The Management Board shall inform the European Parliament if it intends to extend the Executive Director's term of office. Within one month before any such extension, the Executive Director may be invited to make a statement before the competent committee of the European Parliament and answer questions put by its members.
7. An Executive Director whose term of office has been extended may not participate in another selection procedure for the same post at the end of the overall period.
8. The Executive Director may be removed from office only upon a decision of the Management Board acting on a proposal from the Commission.<sup>226</sup>
9. The Management Board shall take decisions on appointment, extension of the term of office or removal from office of the Executive Director by a two-thirds majority of its members with the right to vote.

#### *Article 46*

#### **Responsibilities of the Executive Director**

1. The Executive Director shall manage the Agency. The Executive Director shall be accountable to the Management Board.
- 2.<sup>227</sup> Without prejudice to the powers of the Commission and the Management Board, the Executive Director shall be independent in the performance of his or her duties and shall neither seek nor take instructions from any government, institution, person or any other body.
3. The Executive Director shall report to the European Parliament on the performance of his or her duties when invited to do so. The Council may invite the Executive Director to report on the performance of his or her duties.
4. The Executive Director shall be the legal representative of the Agency.

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<sup>226</sup> **AT, PL:** why can this be done only on a proposal from the Commission?

<sup>227</sup> **PL:** concerns regarding the independence of the Executive Director bearing in mind Article 45(8).

5. The Executive Director shall be responsible for the implementation of the tasks assigned to the Agency by this Regulation. In particular, the Executive Director shall be responsible for:<sup>228</sup>
- (a) the day-to-day administration of the Agency;
  - (b) implementing decisions adopted by the Management Board;
  - (c) preparing the programming document and submitting it to the Management Board after consulting the Commission;
  - (d) implementing the programming document and reporting to the Management Board on its implementation;
  - (e) preparing the consolidated annual report on the Agency's activities and presenting it to the Management Board for adoption;
  - (f) preparing an action plan following-up 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 and to the Executive Board;
  - (g) without prejudicing the investigative competence of OLAF, protecting 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;
  - (h) preparing an anti-fraud strategy for the Agency and presenting it to the Management Board for approval;
  - (i) preparing the draft financial rules applicable to the Agency;

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<sup>228</sup> **FR:** why is point (d) of Article 31(6) of the current Regulation concerning reports on countries of origin not included?

- (j) preparing the Agency's draft statement of estimates of revenue and expenditure and implementing its budget;
- (k) exercising the powers laid down in Article 55 in respect of the Agency's staff;
- (l) taking all decisions on the management of the information systems provided for in this Regulation, including the information portal referred to in Article 8(2)(b);
- (m) taking all decisions on the management of the Agency's internal structures;
- (n) submitting the common analysis to the Management Board in accordance with Article 10(2);<sup>229</sup>
- (na) set up teams of experts for the purpose of Articles 13 and 14 which shall be composed of experts from the Agency's own staff, the Commission and, where necessary, the Member States.**
- (o) submit draft reports and draft recommendations in the context of the monitoring exercise to the Member State concerned and subsequently to the Management Board in accordance with Article 14(3) and (4);<sup>230</sup>
- (p) evaluating, approving and coordinating requests for operational and technical assistance in accordance with Article 16(2) and Article 20;
- (q) ensuring the implementation of the operational plan referred to in Article 19;<sup>231</sup>
- (r) ensuring coordination of the Agency's activities in the migration management support teams with the Commission and other relevant Union agencies in accordance with Article 21(1);
- (s) ensuring implementation of the [...] **Council** decision referred to in Article 22(3);<sup>232</sup>

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<sup>229</sup> **PL**: scrutiny reservation.

<sup>230</sup> **LV, RO**: reservations concerning the monitoring function of the Agency. **PL**: scrutiny reservation.

<sup>231</sup> **PL** suggested "... *support* the implementation of the operational plan.."

<sup>232</sup> **ES, FR, RO**: reservations. **IT**: this point should be deleted.

- (t) deciding, in consultation with the Management Board, on the acquisition or lease of technical equipment in accordance with Article 23(2);
- (u) appointing a coordinating officer of the Agency in accordance with Article 25(1).

*Article 47*

**Deputy Executive Director<sup>233</sup>**

1. A Deputy Executive Director shall assist the Executive Director **in the management of the Agency and in the performance of his or her tasks as referred to in Article 46(5). If the Executive Director is absent or indisposed, the Deputy Executive Director shall take his or her place.**
2. The provisions of Article 45 shall apply to the Deputy Executive Director.<sup>234</sup>

*Article 48*

**Consultative Forum**

1. The Agency shall maintain a close dialogue with relevant civil society organisations and relevant competent bodies operating in the field of asylum policy at local, regional, national, Union or international level. For that purpose, the Agency shall set up a Consultative Forum.
2. The Consultative Forum shall constitute a mechanism for the exchange of information and sharing of knowledge. It shall ensure a close dialogue between the Agency and relevant organisations or bodies as referred to in paragraph 1[...]<sup>235</sup>.
3. The Agency shall invite the European Union Agency for Fundamental Rights, the European **Border and Coast Guard** Agency [...], UNHCR and other relevant organisations or bodies as referred to in paragraph 1<sup>236</sup>.

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<sup>233</sup> **EL:** doubts regarding the necessity of establishing such a position requesting clarification on its selection procedures.

<sup>234</sup> **IT:** add "... *insofar as relevant*".

<sup>235</sup> **EL:** further clarifications requested on this role of the Consultative Forum.

<sup>236</sup> **PL:** Europol should also be included.



On a proposal by the Executive Director, the Management Board shall decide on the composition and working methods of the Consultative Forum, including thematic or geographic-focused consultation groups, and the modalities of transmission of information to the Consultative Forum.

4. The Consultative Forum shall [...] **advise** the Executive Director and the Management Board in matters related to asylum, in accordance with specific needs in areas identified as a priority for the Agency's work.
5. The Consultative Forum shall, in particular:
  - (a) make suggestions to the Management Board on the annual and multi-annual programming referred to in Article 41;
  - (b) provide feedback to the Management Board and suggest measures as follow-up to the annual report on the situation of asylum in the Union referred to in Article 65; and
  - (c) communicate to the Executive Director and the Management Board conclusions and recommendations of conferences, seminars and meetings, as well as on findings from studies or field work carried out by any of the member organisations or bodies of the Consultative Forum which is relevant to the work of the Agency.
6. The Consultative Forum shall meet at least [...] **once** a year.<sup>237</sup>

## CHAPTER 10

### FINANCIAL PROVISIONS

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<sup>237</sup> **BG:** the number of meetings should be increased.

## *Article 49*

### **Budget**

1. Estimates of the revenue and expenditure of the Agency shall be prepared each financial year, corresponding to the calendar year, and shall be shown in the Agency's budget.
2. The Agency's budget shall be balanced in terms of revenue and of expenditure.
3. Without prejudice to other resources, the Agency's revenue shall comprise:
  - (a) a contribution from the Union entered in the general budget of the European Union;
  - (b) Union funding in the form of delegation agreements or ad hoc grants in accordance with its financial rules referred to in Article 53 and with the provisions of the relevant instruments supporting the policies of the Union;
  - (c) any voluntary financial contribution from the Member States;
  - (d) any contribution from the associated countries;
  - (e) charges for publications and any service provided by the Agency;
4. The expenditure of the Agency shall include staff remuneration, administrative and infrastructure expenses as well as operating expenditure.

## *Article 50*

### **Establishment of the budget**

1. Each year the Executive Director shall draw up a provisional draft statement of estimates of the Agency's revenue and expenditure for the following financial year, including the establishment plan, and send it to the Management Board.
2. The Management Board shall, on the basis of that provisional draft, adopt a provisional draft estimate of the Agency's revenue and expenditure for the following financial year.

3. The provisional draft estimate of the Agency's revenue and expenditure shall be sent to the Commission, the European Parliament and the Council by 31 January each year.
4. The Commission shall send the statement of estimates to the budgetary authority together with the draft general budget of the European Union.
5. On the basis of the statement of estimates, the Commission shall enter in the draft general budget of the European Union the estimates it considers 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 of the Treaty.
6. The budgetary authority shall authorise the appropriations for the contribution to the Agency.
7. The budgetary authority shall adopt the Agency's establishment plan.
8. The Agency's budget shall be adopted by the Management Board. It shall become final following final adoption of the general budget of the European Union. Where necessary, it shall be adjusted accordingly.
9. For any building project likely to have significant implications for the budget of the Agency, the provisions of the Commission Delegated Regulation (EU) No 1271/2013<sup>238</sup> shall apply.

#### *Article 51*

#### **Implementation of the budget**

1. The Executive Director shall implement the Agency's budget.
2. Each year the Executive Director shall send to the budgetary authority all information relevant to the findings of evaluation procedures.

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<sup>238</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).

*Article 52*

**Presentation of accounts and discharge**

1. By 1 March of the following financial year, the Agency's accounting officer shall send the provisional accounts to the Commission's Accounting Officer and to the Court of Auditors.
2. By 31 March of the following financial year, the Agency shall send the report on the budgetary and financial management to the European Parliament, the Council and the Court of Auditors.

By 31 March of the following financial year, the Commission's accounting officer shall send the Agency's provisional accounts, consolidated with the Commission's accounts, to the Court of Auditors.

3. On receipt of the Court of Auditors' observations on the Agency's provisional accounts pursuant to Article 148 of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council,<sup>239</sup> the Executive Director shall draw up the Agency's final accounts under his or her own responsibility and submit them to the Management Board for an opinion.
4. The Management Board shall deliver an opinion on the Agency's final accounts.
5. The Executive Director shall, by 1 July following each financial year, send the final accounts to the European Parliament, the Council, the Commission and the Court of Auditors, together with the Management Board's opinion.
6. The final accounts shall be published in the Official Journal of the European Union by 15 November of the following year.
7. The Executive Director shall send the Court of Auditors a reply to its observations by 30 September. The Executive Director shall also send this reply to the Management Board.

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<sup>239</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, 26.10.2012, p. 1).

8. 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 the financial year in question, in accordance with Article 165(3) of the Financial Regulation.
9. On a recommendation from the Council acting by a qualified majority, the European Parliament shall, before 15 May of year N + 2, give a discharge to the Executive Director in respect of the implementation of the budget for year N.

*Article 53*

**Financial rules**

1. The financial rules applicable to the Agency shall be adopted by the Management Board after consulting the Commission. They shall comply with Delegated Regulation (EU) No 1271/2013 except where a derogation from the provisions of that Regulation is specifically required for the Agency's operation and if the Commission has given its prior consent.
2. The Agency may award grants related to the fulfilment of the tasks referred to in Article 2, in accordance with this Regulation or by delegation of the Commission pursuant to Article 58(1)(c)(iv) of Regulation (EU, Euratom) No 966/2012.<sup>240</sup> The relevant provisions of Regulation (EU, Euratom) No 966/2012 and Commission Delegated Regulation (EU) No 1268/2012<sup>241</sup> shall apply.

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<sup>240</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, 26.10.2012, p. 1).

<sup>241</sup> Commission Delegated Regulation (EU) No 1268/2012 of 29 October 2012 on the rules of application of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council on the financial rules applicable to the general budget of the Union (OJ L 362, 31.12.2012, p. 1).

## CHAPTER 11

### GENERAL PROVISIONS

#### *Article 54*

##### **Legal status**

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 and dispose of movable and immovable property and be a party to legal proceedings.
3. The Agency shall be independent in [...] **implementing its** operational and technical [...] **mandate**.
4. The Agency shall be represented by its Executive Director.
5. The seat of the Agency shall be Malta.

#### *Article 55*

##### **Staff**

1. The Staff Regulations of Officials of the European Communities and the Conditions of Employment of Other Servants of the Union and the rules adopted by agreement between the institutions of the Union for giving effect to those Staff Regulations and the Conditions of Employment of Other Servants shall apply to the staff of the Agency.
2. The Management Board shall adopt appropriate implementing rules for giving effect to the Staff Regulations and the Conditions of Employment of Other Servants in accordance with Article 110 of the Staff Regulations.

3. The powers conferred on the appointing authority by the Staff Regulations and on the authority entitled to conclude contracts by the Conditions of Employment of Other Servants shall be exercised by the Agency in respect of its own staff.
4. The Agency may make use of seconded national experts or other staff not employed by the Agency. The Management Board shall adopt a decision laying down rules on the secondment of national experts to the Agency.
5. The Agency may employ staff to work in the field in Member States.<sup>242</sup>

*Article 56*

**Privileges and immunities**

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

*Article 57*

**Language arrangements**

1. The provisions laid down in Council Regulation No 1<sup>243</sup> shall apply to the Agency.
2. Without prejudice to decisions taken on the basis of Article 342 of the Treaty, the consolidated annual activity report on the Agency's activities and the programming document shall be produced in all the official languages of the institutions of the European Union.
3. The translation services required for the functioning of the Agency shall be provided by the Translation Centre of the bodies of the European Union.

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<sup>242</sup> **PL:** for which activities can the staff be employed?

<sup>243</sup> Regulation No 1 of 15 April 1958 determining the languages to be used in the European Economic Community (OJ 17, 6.10.1958, p. 385).

*Article 58*

**Transparency**

1. Regulation (EC) No 1049/2001 shall apply to documents held by the Agency.
2. The Agency may communicate on its own initiative in the fields within its mission. It shall make public the consolidated annual activity report 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, within six months of the date of its first meeting, adopt the detailed rules 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 official language 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 be subject to a complaint to the Ombudsman or an action before the Court of Justice of the European Union, under the conditions laid down in Articles 228 and 263 of the Treaty respectively.



### Combating fraud

1. In order to facilitate combating fraud, corruption and other unlawful activities Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council<sup>244</sup> 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 adopt appropriate provisions applicable to all the employees of the Agency using the template set out in the Annex to that Agreement.
2. The European 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 and Council Regulation (EC, Euratom) No 2185/96.<sup>245</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 European Court of Auditors and OLAF to conduct such audits and investigations, according to their respective competences.

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<sup>244</sup> Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) and repealing Regulation (EC) No 1073/1999 of the European Parliament and of the Council and Council Regulation (Euratom) No 1074/1999 (OJ L 248, 18.9.2013, p. 1).

<sup>245</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).

## Article 60

### **Security rules on the protection of classified information and sensitive non-classified information<sup>246</sup>**

1. The Agency shall apply the Commission's rules on security as set out in Commission Decisions (EU, Euratom) 2015/443<sup>247</sup> and 2015/444.<sup>248</sup> Those rules shall apply, in particular, to the exchange, processing and storage of classified information.
2. The Agency shall also apply the security principles relating to the processing of non-classified sensitive information as set out in the Decisions referred to in paragraph 1 and as implemented by the Commission. The Management Board shall establish measures for the application of those security principles.

## Article 61

### **Liability**

1. The Agency's contractual liability 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.

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<sup>246</sup> **SE**: scrutiny reservation on the Article.

<sup>247</sup> Commission Decision (EU, Euratom) 2015/443 of 13 March 2015 on Security in the Commission (OJ L 72, 17.3.2015, p. 41).

<sup>248</sup> Commission Decision (EU, Euratom) 2015/444 of 13 March 2015 on the security rules for protecting EU classified information (OJ L 72, 17.3.2015, p. 53).

4. The Court of Justice of the European Union shall have jurisdiction in disputes over compensation for damages referred to in paragraph 3.
5. The personal liability of its staff towards the Agency shall be governed by the provisions laid down in the Staff Regulations or Conditions of Employment applicable to them.

*Article 62*

**Administrative monitoring**

The activities of the Agency shall be subject to the inquiries of the European Ombudsman in accordance with Article 228 of the Treaty.

*Article 63*

**Headquarters agreement and operating conditions**

1. The necessary arrangements concerning the accommodation to be provided for the Agency in the host Member State and the facilities to be made available by that Member State together with the specific rules applicable in the host Member State to the Executive Director, members of the Management Board, Agency staff and members of their families shall be laid down in a Headquarters Agreement between the Agency and the host Member State, concluded after obtaining the approval of the Management Board.
2. The Agency's host Member State shall provide the best possible<sup>249</sup> conditions to ensure the proper functioning of the Agency, including multilingual, European-oriented schooling and appropriate transport connections.

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<sup>249</sup> **DE:** delete "best possible" as there should be equal treatment of Agencies.

## CHAPTER 12

### FINAL PROVISIONS

*Article 64 [...]*

*Article 65*

#### **Reporting**<sup>250</sup>

1. The Agency shall draw up an annual activity report on the situation of asylum in the Union, taking due account of information already available from other relevant sources. As part of that report, the Agency shall evaluate the results of activities carried out under this Regulation and make a comprehensive comparative analysis of them with the aim of improving the quality, consistency and effectiveness of the CEAS.
2. The Agency shall transmit the annual activity report to the Management Board, the European Parliament, the Council and the Commission. The Executive Director shall present the annual report to the European Parliament.

*Article 66*

#### **Evaluation and review**

1. No later than three years from the day of entry into force of this Regulation, and every five years thereafter, the Commission shall commission an evaluation to assess, in particular, the Agency's performance in relation to its objectives, mandate and tasks. That evaluation shall cover the Agency's impact on practical cooperation on asylum-related matters and on **facilitating the implementation of the CEAS**. The evaluation shall take due regard of progress made, within its mandate, including assessing whether additional measures are necessary to ensure effective solidarity and sharing of responsibilities with Member States subject to particular pressure.

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<sup>250</sup> **CZ:** this Article should be in Article 4 of Chapter 2 instead. **FR:** scrutiny reservation on the 2 separate reports the Agency should draw up.

The evaluation shall, in particular, address the possible need to modify the mandate of the Agency, and the financial implications of any such modification. It shall also examine whether the management structure is appropriate for carrying out the Agency's duties. The evaluation shall take into account the views of stakeholders, at both Union and national level.

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 findings of the evaluation shall be made public.
3. On the occasion of every second evaluation, the Commission shall consider whether continuation of the Agency is justified with regard to its objectives, mandate and tasks and it may propose that this Regulation be amended accordingly or repealed.

#### *Article 67*

#### **Repeal**

1. Regulation (EU) No 439/2010 is repealed with effect from entry into force of this Regulation.
2. References to the repealed Regulation shall be construed as references to this Regulation in accordance with the correlation table set out in the Annex.

*Article 68*

**Entry into force**

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

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

Done at Brussels,

*For the European Parliament*  
*The President*

*For the Council*  
*The President*

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