



Plenary sitting

2.10.2019

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CORRIGENDUM

to the position of the European Parliament adopted at first reading on 17 April 2019 with a view to the adoption of Regulation (EU) 2019/... of the European Parliament and of the Council on the European Border and Coast Guard and repealing Regulation (EU) n° 1052/2013 of the European Parliament and of the Council and Regulation (EU) n° 2016/1624 of the European Parliament and of the Council
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(COM(2018)0631 – C8-0406/2018 – 2018/0330A(COD))

In accordance with Rule 241 of the European Parliament's Rules of Procedure, the above position is corrected as follows:

REGULATION (EU) 2019/...
OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of ...

on the European Border and Coast Guard
and repealing ■ **Regulations (EU) No 1052/2013 and (EU) 2016/1624**

■

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 77(2)(b) and (d) and Article 79(2)(c) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,
Having regard to the opinion of the European Economic and Social Committee¹,
Having regard to the opinion of the Committee of the Regions²,
Acting in accordance with the ordinary legislative procedure³,

¹ OJ C 110, 22.3.2019, p. 62.

² Opinion of 6 February 2019 (not yet published in the Official Journal).

³ Position of the European Parliament of 17 April 2019.

Whereas:

(1) The objective of Union policy in the field of external border management is to develop and implement European integrated border management at national and Union level, which is a necessary corollary to the free movement of persons within the Union and is a fundamental component of an area of freedom, security and justice. European integrated border management is central to improving migration management. The aim is to manage the crossing of the external borders efficiently and address migratory challenges and potential future threats at those borders, thereby contributing to addressing serious crime with a cross-border dimension and ensuring a high level of internal security within the Union. At the same time, it is necessary to act in full respect for fundamental rights and in a manner that safeguards the free movement of persons within the Union.

(2) The European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union was established by Council Regulation (EC) No 2007/2004⁴. Since taking up its responsibilities on 1 May 2005, it has been successful in assisting Member States with implementing the operational aspects of external border management through joint operations and rapid border interventions, risk analysis, information exchange, relations with third countries and the return of returnees.

⁴ Council Regulation (EC) No 2007/2004 of 26 October 2004 establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (OJ L 349, 25.11.2004, p. 1).

(3) The European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union has been renamed the European Border and Coast Guard Agency (the ‘Agency’), *commonly referred to as Frontex*, and its tasks have been expanded with full continuity in all its activities and procedures. The key roles of the Agency should be: to establish a technical and operational strategy as part of the implementation of the multiannual strategic policy cycle for European integrated border management; to oversee the effective functioning of border control at the external borders; to carry out risk analysis and vulnerability assessments; to provide increased technical and operational assistance to Member States and third countries through joint operations and rapid border interventions; to ensure the practical execution of measures in a situation requiring urgent action at the external borders; to provide technical and operational assistance in the support of search and rescue operations for persons in distress at sea; and to organise, coordinate and conduct return operations and return interventions ■ .

(4) Since the beginning of the migratory crisis in 2015, the Commission has taken up important initiatives *and has proposed a series of measures with a view to strengthening* the protection of the external borders *and restoring the normal functioning of the Schengen area*. A proposal for significantly enhancing the mandate of the European Agency for the Management of Operational Cooperation at the External Borders was presented in December 2015 and negotiated *swiftly* in 2016. The resulting regulation, Regulation (EU) 2016/1624 of the European Parliament and of the Council⁵, entered into force on 6 October 2016.

⁵ Regulation (EU) 2016/1624 of the European Parliament and of the Council of 14 September 2016 on the European Border and Coast Guard and amending Regulation (EU) 2016/399 of the European Parliament and of the Council and repealing Regulation (EC) No 863/2007 of the European Parliament and of the Council, Council Regulation (EC) No 2007/2004 and Council Decision 2005/267/EC (OJ L 251, 16.9.2016, p. 1).

(5) However, the Union framework in the areas of external border control, returns, ***combating cross-border crime***, and asylum still needs to be further improved. To that end, and to further underpin the current and future envisaged operational efforts, the European Border and Coast Guard should be reformed by giving the Agency a stronger mandate and, in particular, by providing it with the necessary capabilities in the form of a European Border and Coast Guard standing corps (the ‘standing corps’). The standing corps ***should gradually but swiftly reach the strategic target of having a capacity*** of 10 000 operational staff, ***as set out in Annex I***, with executive powers, ***where applicable***, to effectively support Member States on the ground in their efforts to protect the external borders, to fight ***cross-border crime*** and to significantly step up the effective ***and sustainable*** return of irregular migrants. ***Such a capacity of 10 000 operational staff represents the maximum available capacity required to effectively address existing and future operational needs for border and return operations in the Union and third countries, including a rapid reaction capacity to face future crises.***

(6) The Commission should carry out a review of the overall number and composition of the standing corps, including the size of individual Member States' contributions thereto, as well as of its training, expertise and professionalism. By March 2024, the Commission should, where necessary, submit appropriate proposals to amend Annexes I, II, III and IV. Where the Commission does not present a proposal, it should explain the reason therefor.

(7) The implementation of this Regulation, in particular the establishment of the standing corps, including after the Commission's review of the standing corps, should be subject to the multiannual financial framework.

(8) In its conclusions of 28 June 2018, the European Council called for further strengthening of the supportive role of the Agency, including in cooperation with third countries, through increased resources and an enhanced mandate, with a view to ensuring effective external border control and significantly stepping up the effective return of irregular migrants.

(9) It is necessary to monitor the crossing of the external borders efficiently, to address migratory challenges and potential future threats at the external borders, to ensure a high level of internal security within the Union, to safeguard the functioning of the Schengen area and to respect the overarching principle of solidarity. Those actions and objectives should be accompanied by the proactive management of migration, including the necessary measures in third countries. To that end, it is necessary to consolidate the European Border and Coast Guard and to further expand the mandate of the Agency. █

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(10) When implementing European integrated border management, coherence with other policy objectives should be ensured **█** .

(11) European integrated border management, based on the four-tier access control model, comprises measures in third countries, such as under the common visa policy, measures with neighbouring third countries, border control measures at the external borders, risk analysis and measures within the Schengen area and return.

(12) European integrated border management should be implemented as a shared responsibility of the Agency and the national authorities responsible for border management, including coast guards to the extent that they carry out maritime border surveillance operations and any other border control tasks, as well as the national authorities responsible for returns. While Member States retain the primary responsibility for the management of their external borders in their interest and in the interest of all Member States and are responsible for issuing return decisions, the Agency should support the application of Union measures relating to the management of the external borders and returns by reinforcing, assessing and coordinating the actions of the Member States which implement those measures. *The activities of the Agency should complement the efforts of the Member States.*

(13) To ensure the effective implementation of European integrated border management and increase the efficiency of Union return policy, a European Border and Coast Guard should be established. It should be provided with the requisite financial and human resources and equipment. The European Border and Coast Guard should be composed of the Agency and the national authorities responsible for border management, including coast guards to the extent that they carry out border control tasks, as well as the national authorities responsible for returns. As such it will rely upon the common use of information, capabilities and systems at national level and the response of the Agency at Union level.

(14) European integrated border management does not alter the respective competences of the Commission and the Member States in the customs area, in particular regarding controls, risk management and the exchange of information.

(15) The development of policy and law on external border control and return, including the development of a *multiannual strategic policy for European integrated border management*, remains a responsibility of the Union institutions. Close coordination between the Agency and those institutions should be guaranteed.

(16) The effective implementation of European integrated border management by the European Border and Coast Guard should be ensured by means of a multiannual strategic policy cycle. The multiannual cycle should set out an integrated, unified and continuous process for providing strategic guidelines to all the relevant actors at Union level and at national level in the area of border management and returns so that those actors are able to implement European integrated border management in a coherent manner. It should also address all relevant interactions of the European Border and Coast Guard with the Commission and other Union institutions, bodies, offices and agencies, and cooperation with other relevant partners, including third countries and third parties as appropriate.

(17) European integrated border management requires ■ integrated planning between the Member States and ■ the Agency for border and return operations in order to prepare responses to *challenges* at the external borders, *for* contingency planning and *for coordinating* the long-term development of capabilities both in terms of recruitment and training and in terms of the acquisition and development of equipment.

(18) The Agency should develop technical standards for information exchange as provided for in this Regulation. In addition, for the effective implementation of Regulation (EU) 2016/399 of the European Parliament and of the Council⁶, common minimum standards for external border surveillance should be developed. To that end, the Agency should be able to contribute to the development of common minimum standards in line with the respective competences of the Member States and the Commission. Those common minimum standards should be developed taking into account the type of borders, the impact levels attributed by the Agency to each external border section and other factors such as geographical particularities. When developing those common minimum standards, possible limitations deriving from national law should be taken into account.

(19) The technical standards for information systems and software applications should be aligned with the standards used by the European Union Agency for the Operational Management of Large-Scale IT Systems in the Area of Freedom, Security and Justice (eu-LISA) for other IT systems in the area of freedom, security and justice.

⁶ Regulation (EU) 2016/399 of the European Parliament and of the Council of 9 March 2016 on a Union Code on the rules governing the movement of persons across borders (Schengen Borders Code) (OJ L 77, 23.3.2016, p. 1).

(20) The implementation of this Regulation does not affect the division of competence between the Union and the Member States or the obligations of Member States under the United Nations Convention on the Law of the Sea, the International Convention for the Safety of Life at Sea, the International Convention on Maritime Search and Rescue, the United Nations Convention against Transnational Organized Crime and its Protocol against the Smuggling of Migrants by Land, Sea and Air, the 1951 Convention relating to the Status of Refugees, the 1967 Protocol thereto, the European Convention for the Protection of Human Rights and Fundamental Freedoms, *the United Nations Convention relating to the Status of Stateless Persons* and other relevant international instruments.

(21) The implementation of this Regulation does not affect Regulation (EU) No 656/2014 of the European Parliament and of the Council⁷. *Sea operations should be carried out in a way that, in all instances, ensures the safety of the persons intercepted or rescued, the safety of the units that take part in the sea operation in question and the safety of third parties.*

⁷ Regulation (EU) No 656/2014 of the European Parliament and of the Council of 15 May 2014 establishing rules for the surveillance of the external sea borders in the context of operational cooperation coordinated by the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (OJ L 189, 27.6.2014, 9. p. 93).

(22) The Agency should carry out its tasks *in accordance with the principle of subsidiarity and* without prejudice to the responsibilities of the Member States with regard to maintaining law and order and safeguarding internal security.

(23) The Agency should carry out its tasks without prejudice to the competence of the Member States as regards defence.

(24) The extended tasks and competence of the Agency should be balanced with strengthened fundamental rights safeguards and increased accountability *and liability, in particular in terms of the exercise of executive powers by the statutory staff.*

(25) The Agency relies on the cooperation of Member States to be able to perform its tasks effectively. In that respect, it is important for the Agency and the Member States to act in good faith and to exchange accurate information in a timely manner. No Member State should be obliged to supply information the disclosure of which it considers contrary to the essential interests of its security.

(26) Member States should also, in their own interest and in the interest of the other Member States, contribute relevant data necessary for the activities carried out by the Agency, including for the purposes of situational awareness, risk analysis, vulnerability assessments and integrated planning. Equally, they should ensure that the data are accurate and up-to-date and are obtained and entered lawfully. *Where those data include personal data, Union law on data protection should apply in full.*

(27) The communication network established under this Regulation should be based on and replace the EUROSUR communication network developed in the framework of Regulation (EU) No 1052/2013 of the European Parliament and of the Council⁸. The communication network established under this Regulation should be used for all secured information exchanges within the European Border and Coast Guard. The level of accreditation of the communication network should be increased to the classification level of CONFIDENTIEL UE/EU CONFIDENTIAL in order to improve information assurance between the Member States and with the Agency.

(28) EUROSUR is necessary for the European Border and Coast Guard to be able to provide a framework for the exchange of information and the operational cooperation between Member States' national authorities and with the Agency. EUROSUR provides national authorities and the Agency with the infrastructure and tools needed to improve their situational awareness and to *increase* reaction capability at the external borders for the purpose of detecting, preventing and combating illegal immigration and cross-border crime, thereby contributing to saving the lives of migrants and ensuring their protection.

⁸ *Regulation (EU) No 1052/2013 of the European Parliament and of the Council of 22 October 2013 establishing the European Border Surveillance System (Eurosir) (OJ L 295, 6.11.2013, p. 11).*

(29) Member States should establish national coordination centres to improve the exchange of information and cooperation between Member States and with the Agency with respect to border surveillance and the carrying out of border checks. It is essential for the proper functioning of EUROSUR that all national authorities with a responsibility for external border surveillance under national law cooperate via national coordination centres.

(30) The role of the national coordination centre to coordinate and exchange information among all authorities with a responsibility for external border control at national level is without prejudice to the competence established at national level with regard to planning and implementing border control.

(31) This Regulation should not hinder Member States from also making their national coordination centres responsible for coordinating the exchange of information and for cooperation with regard to other components of *European* integrated border management **■** .

(32) The quality of the information exchanged between the Member States and the Agency *and the timeliness of the exchange of such information are prerequisites for* the proper functioning of European integrated border management. Building on the success of EUROSUR, that quality should be ensured through standardisation, the automation of the information exchange across networks and systems, information assurance and control of the quality of the data and information transmitted.

(33) The Agency should provide the necessary assistance for the development and operation of EUROSUR, including the interoperability of systems, in particular by establishing, maintaining and coordinating EUROSUR.

(34) EUROSUR should provide an exhaustive situational picture not only at the external borders but also within the Schengen area and in the pre-frontier area. It should cover land, sea and air border surveillance and border checks. *The provision of situational awareness within the Schengen area should not lead to operational activities of the Agency at the internal borders of the Member States.*

(35) Air border surveillance should be an element of border management since both commercial and private flights and remotely piloted aircraft systems are used for illegal activities related to immigration and cross-border crime. *Air border surveillance aims to detect and monitor such suspicious flights crossing or intending to cross the external borders and to perform related risk analysis with a view to triggering reaction capabilities by the competent authorities of the Union and the Member States. For that purpose, inter-agency cooperation at Union level should be promoted between the Agency, the Network Manager of the European Air Traffic Management Network (EATMN) and the European Union Aviation Safety Agency (EASA). Where relevant, Member States should be able to receive information on suspicious external flights and react accordingly. The Agency should monitor and support research and innovation activities in that area.*

(36) The reporting of events related to unauthorised secondary movements in EUROSUR will contribute to the monitoring by the Agency of migratory flows towards and within the Union for the purpose of risk analysis and situational awareness. The implementing act laying down the details of the information layers of the situational pictures and the rules for the establishment of specific situational pictures should further define the type of reporting to best meet this objective.

(37) The EUROSUR fusion services supplied by the Agency should be based on the common application of surveillance tools and inter-agency cooperation at Union level, including the provision of Copernicus security services. EUROSUR fusion services should provide the Member States and the Agency with value-added-information services related to European integrated border management. EUROSUR fusion services should be expanded to support border checks, air border surveillance and the monitoring of migration flows.

(38) The practice of travelling in small and unseaworthy vessels has dramatically increased the number of migrants drowning at the southern maritime external borders. EUROSUR should considerably improve the operational and technical ability of the Agency and the Member States to detect such small vessels and to improve the reaction capability of the Member States, thereby contributing to reducing the loss of lives of migrants, ***including in the framework of search and rescue operations.***

(39) It is recognised in this Regulation that migratory routes are also taken by persons in need of international protection.

(40) The Agency should prepare general and tailored risk analyses based on a common integrated risk analysis model, to be applied by the Agency itself and by Member States. The Agency should, based also on information provided by Member States, provide adequate information covering all aspects relevant to European integrated border management, especially border control, return, *the phenomenon of unauthorised* secondary movements of third-country nationals within the Union *in terms of trends, volume and routes* , prevention of cross-border crime including facilitation of unauthorised border crossings, trafficking in human beings, terrorism and threats of a hybrid nature, as well as the situation in relevant third countries, so as to allow for appropriate measures to be taken or to tackle identified threats and risks with a view to improving the integrated management of the external borders.

(41) Given its activities at the external borders, the Agency should contribute to preventing and detecting **■** cross-border *crime*, such as migrant smuggling, trafficking in human beings and terrorism, where it is appropriate for it to act and where it has obtained relevant information through its activities. It should coordinate its activities with Europol, which is the agency responsible for supporting and strengthening Member States' actions and their cooperation in preventing and combating serious crime affecting two or more Member States. *The* cross-border dimension is characterised by crimes that are directly linked to unauthorised crossings of the external borders, including trafficking in human beings or smuggling of migrants. *In accordance with* Council Directive 2002/90/EC⁹, Member States *are able to decide* not to impose sanctions where the aim of the behaviour is to provide humanitarian assistance to migrants.

⁹ Council Directive 2002/90/EC of 28 November 2002 defining the facilitation of unauthorised entry, transit and residence (OJ L 328, 5.12.2002, p. 17).

(42) In a spirit of shared responsibility, the role of the Agency should be to monitor regularly the management of the external borders, ***including the respect for fundamental rights in the border management and return activities of the Agency***. The Agency should ensure proper and effective monitoring not only through situational awareness and risk analysis, but also through the presence of experts from its own staff in Member States. The Agency should therefore be able to deploy liaison officers to Member States for a period of time during which the liaison officer reports to the executive director. The reports of the liaison officers should form part of the vulnerability assessment.

(43) The Agency should carry out a vulnerability assessment based on objective criteria to assess the capacity and readiness of the Member States to face challenges at their external borders and to contribute to the standing corps and technical equipment pool. The vulnerability assessment should include an assessment of the equipment, infrastructure, staff, budget and financial resources of Member States as well as their contingency plans to address possible crises at the external borders. Member States should take measures to address any deficiencies identified in that assessment. The executive director should identify the measures to be taken and recommend them to the Member State concerned. The executive director should also set a time limit within which those measures should be taken and closely monitor their timely implementation. Where the necessary measures are not taken within the set time limit, the matter should be referred to the management board for a further decision.

(44) If the Agency is not provided with the accurate and timely information necessary for carrying out a vulnerability assessment, it should be able to take that fact into account when performing the vulnerability assessment, unless duly justified reasons are provided for withholding the data.

(45) The vulnerability assessment and the Schengen evaluation mechanism established by Council Regulation (EU) No 1053/2013¹⁰ are two complementary mechanisms for guaranteeing Union quality control on the proper functioning of the Schengen area and ensuring constant preparedness at both Union and national levels to respond to any challenges at the external borders. ***While the Schengen evaluation mechanism is the primary method for evaluating the implementation of and compliance with Union law in the Member States,*** the synergies between the vulnerability assessment and the Schengen evaluation mechanism should be maximised with a view to establishing an improved situational picture of the functioning of the Schengen area, avoiding, to the extent possible, duplication of efforts on the Member States' side, and ensuring the better-coordinated use of the relevant Union financial instruments supporting the management of the external borders. For that purpose, the regular exchange of information between the Agency and the Commission on the results of both mechanisms should be established.

¹⁰ Council Regulation (EU) No 1053/2013 of 7 October 2013 establishing an evaluation and monitoring mechanism to verify the application of the Schengen *acquis* and repealing the Decision of the Executive Committee of 16 September 1998 setting up a Standing Committee on the evaluation and implementation of Schengen (OJ L 295, 6.11.2013, p. 27).

(46) Given that the Member States establish border sections, to which the Agency attributes impact levels, and that the reaction capabilities of the Member States and of the Agency should be linked to those impact levels, a fourth impact level – the critical impact level – should be established to be attributed to a border section on a temporary basis where the Schengen area is at risk and where the Agency should intervene.

(47) Where a high or critical impact level is attributed to a maritime border section due to an increase of illegal immigration, the Member States concerned should take that increase into account for the planning and conducting of search and rescue operations since such a situation could generate an increase in requests for assistance for persons in distress at sea.

(48) The Agency should organise appropriate technical and operational assistance to Member States in order to reinforce their capacity to implement their obligations with regard to external border control and to face challenges at the external borders resulting from ***an increased number of arrivals of irregular migrants*** or cross-border crime. Such assistance should be without prejudice to the relevant national authorities' competence to initiate criminal investigations. In that respect, the Agency should, either on its own initiative and ***with the agreement of the Member State concerned*** or at the request of that Member State, organise and coordinate joint operations for one or more Member States, deploy border management teams, migration management support teams and return teams (collectively referred to as 'teams') from the standing corps and provide the necessary technical equipment.

(49) Where there is a specific and disproportionate challenge at the external borders, the Agency should, either on its own initiative and ***with the agreement of the Member State concerned*** or at the request of that Member State, organise and coordinate rapid border interventions and deploy both teams from the standing corps and technical equipment, including from the rapid reaction equipment pool. The rapid reaction equipment pool should contain a limited number of items of equipment needed for possible rapid border interventions. Rapid border interventions should provide reinforcement for a limited period of time in situations where an immediate response is required and where such an intervention would provide an effective response. To ensure that such intervention is effective, Member States should make ***staff that they second to the Agency, provide to the Agency for short-term deployment and deploy for the purposes of the reserve for rapid reaction*** available to form relevant teams and provide the necessary technical equipment. ***Where the crew deployed with the technical equipment of a Member State originates in that Member State, it should count as part of that Member State's contribution to the standing corps.*** The Agency and the Member State concerned should agree upon an operational plan.

(50) Where a Member State faces specific and disproportionate migratory challenges at particular areas of its external borders characterised by large, inward, mixed migratory flows, the Member States should be able to rely on increased technical and operational reinforcements. Those reinforcements should be provided in hotspot areas by migration management support teams. Those teams should be composed of operational staff to be deployed from the standing corps and experts from *the European Asylum Support Office (EASO)*, Europol *and, where relevant, the European Union Agency for Fundamental Rights*, other Union bodies, offices and agencies, and Member States. The Commission should ensure the necessary coordination of the assessment of needs submitted by Member States. The Agency should assist the Commission in the coordination among the different agencies on the ground. *The Commission should, in cooperation with the host Member State and relevant Union agencies, establish the terms of cooperation at hotspot areas.* The Commission should ensure the *cooperation of the relevant agencies within their respective mandates and be responsible for coordinating the activities of the migration management support teams.*

(51) Member States should ensure that any authorities which are likely to receive applications for international protection, such as the police, border guards, immigration authorities and personnel of detention facilities, have the relevant information. They should also ensure that such authorities' personnel receive the necessary level of training which is appropriate to their tasks and responsibilities and instructions to inform applicants as to where and how applications for international protection may be lodged *and instructions as to how to refer persons in a vulnerable situation to the appropriate referral mechanisms.*

(52) In its conclusions of 28 June 2018, the European Council reconfirmed the importance of relying on a comprehensive approach to migration and considered that migration is a challenge not only for one Member State but also for Europe as a whole. In that respect, it highlighted the importance for the Union of providing full support to ensure an orderly management of migration flows. ■

(53) The Agency and *EASO* should cooperate closely in order to address effectively migratory challenges characterised by large inward mixed migratory flows, in particular at the external borders. In particular, the Agency and EASO should coordinate their activities and support Member States to facilitate procedures regarding international protection and the return procedure with regard to third-country nationals whose applications for international protection are rejected. The Agency and *EASO* should also cooperate in other common operational activities such as shared risk analysis, the collection of statistical data, training, and support to Member States in connection with contingency planning.

(54) National authorities carrying out coast guard functions are responsible for a wide range of tasks, which may include maritime safety, security, search and rescue, border control, fisheries control, customs control, general law enforcement and environmental protection. The Agency, the European Fisheries Control Agency(EFCA) and the European Maritime Safety Agency (EMSA) should therefore strengthen their cooperation both with each other and with the national authorities carrying out coast guard functions to increase maritime situational awareness and to support coherent and cost-efficient action. Synergies between the various actors in the maritime environment should be in line with European integrated border management and maritime security strategies.

(55) In hotspot areas, the Member States should cooperate with the relevant Union agencies, which should act within their respective mandates and powers, under the coordination of the Commission. The Commission, in cooperation with the relevant Union agencies, should ensure that activities in hotspot areas comply with relevant Union law **and fundamental rights**.

(56) Where justified by the results of the vulnerability assessment or risk analysis or where a critical impact **level** has been **temporarily** attributed to one or more border sections, the executive director of the Agency should recommend to the Member State concerned to initiate and carry out joint operations or rapid border interventions.

(57) Where external border control is rendered ineffective to such an extent that it risks jeopardising the functioning of the Schengen area, either because a Member State does not take the necessary measures in line with a vulnerability assessment or because a Member State facing specific and disproportionate challenges at the external borders has not requested sufficient support from the Agency or is not implementing such support, a unified, rapid and effective response should be delivered at Union level. For the purpose of mitigating these risks, and to ensure better coordination at Union level, the Commission should ***propose to the Council a decision that identifies*** the measures to be implemented by the Agency and ***requires*** the Member State concerned to cooperate with the Agency in the implementation of those measures. ***The implementing power to adopt such a decision should be conferred on the Council because of the potentially politically sensitive nature of the measures to be decided, which are likely to touch on national executive and enforcement powers.*** The Agency should then determine the actions to be taken for the practical execution of the measures indicated in the ***Council*** decision. The Agency should draw up an operational plan with the Member State concerned. The Member State concerned should facilitate the implementation of the ***Council*** decision and the operational plan by fulfilling, *inter alia*, its obligations as provided for in this Regulation. If a Member State does not comply with that ***Council*** decision within 30 days and does not cooperate with the Agency in the implementation of the measures contained in that decision, the Commission should be able to trigger the specific procedure provided for in Article 29 of Regulation (EU) 2016/399 to address exceptional circumstances putting the overall functioning of the area without internal border control at risk.

(58) The standing corps should be composed of **four** categories of operational staff, namely statutory staff, staff seconded to the Agency by the Member States for a **long term**, staff provided by Member States for **short-term** deployments **and staff forming part of the reserve for rapid reaction for rapid border interventions**. Operational staff should consist of border guards, return escorts, return specialists, and other relevant staff. The standing corps should be deployed in the framework of teams. **The actual number of operational staff deployed from the standing corps should depend on operational needs.**

(59) Operational staff deployed as members of the teams should have **all** the necessary powers to carry out border control and return tasks, including the tasks requiring executive powers, set out in relevant national law or in this Regulation. **Where statutory staff exercise executive powers, the Agency should be liable for any damage caused.**

(60) Member States should contribute to the standing corps in accordance with Annex II for long-term secondments and Annex III for short-term deployments. The individual contributions of Member States should be established on the basis of the distribution key agreed during the negotiations in 2016 on Regulation (EU) 2016/1624 for the purposes of the rapid reaction pool and set out in Annex I to that Regulation. That distribution key should be proportionally adapted to the size of the standing corps. Those contributions should also be established in a proportionate way for the Schengen associated countries.

(61) When selecting the numbers and profiles of staff to be indicated in the decision of the management board, the executive director should apply the principles of equal treatment and proportionality, in particular with regard to the national capabilities of Member States.

(62) The exact timing for short-term deployments from the standing corps and for making available technical equipment co-financed under the specific actions of the Internal Security Fund or any other dedicated Union funding should be agreed between each Member State and the Agency through annual bilateral negotiations, taking into account capacity and proportionality. When requesting national contributions to the standing corps, the executive director should apply as a general rule the principles of proportionality and equal treatment of Member States with the aim of preventing situations that would substantially affect the discharge of national tasks in one Member State by requesting the deployment of the annual contributions of that Member State in one particular period of four months. Such arrangements should include the possibility for Member States to fulfil their obligations regarding deployment periods by means of non-consecutive periods. With regard to short-term deployments from the standing corps, Member States should also be able to fulfil their obligations for short-term deployment in a cumulative manner, by deploying more staff for shorter periods or by deploying the individual staff members for more than four months in accordance with the planning agreed through annual bilateral negotiations.

(63) Without prejudice to the timely conclusion of the operational plan regarding sea operations, the Agency should provide participating Member States, at the earliest possible stage, with specific information on the relevant jurisdiction and applicable law, in particular on the prerogatives of the commanders of ships and aircraft, the conditions of the use of force and the imposition of restrictive or custodial measures.

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(64) The long-term development of human resources to secure the contributions of the Member States to the standing corps should be supported by a financial support system. For that purpose, it is appropriate to authorise the Agency to use the award of grants to the Member States without a call for proposals under financing not linked to costs subject to the fulfilment of the conditions set out in Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council¹¹. The financial support should enable Member States to hire and train additional staff to provide them with the necessary flexibility to comply with the mandatory contributions to the standing corps. ***The financial support system should take into account the time required for recruitment and training, and it should therefore be based on the N + 2 rule.*** The dedicated financing system should strike the right balance between the risks of irregularities and fraud and costs of control. This Regulation sets the essential conditions for triggering the financial support, namely the recruitment and training of the adequate number of border guards or other specialists corresponding to the number of officers seconded to the Agency for a long term or the effective deployment of officers during the Agency's operational activities for ***a consecutive or non-consecutive period of at least four months or on a pro-rata basis for deployments for a consecutive or a non-consecutive period of less than four months.*** Given the lack of relevant and comparable data on actual costs across Member States, the development of a cost-based financing scheme would be overly complex and would not address the need for a simple, fast, efficient and effective financing scheme. For the purpose of fixing the amount of such financing to different Member States, it is appropriate to use as a reference amount the annual salary of contractual agents in function group III, grade 8, step 1 of the institutions of the Union, adjusted by a corrective coefficient per Member State in line with the principle of sound financial management and in the spirit of equal treatment. When implementing such financial support, the Agency and Member States ***should*** ensure that the principles of co-financing and no double funding are complied with.

¹¹ Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012 (*OJ L 193, 30.7.2018, p. 1*).

(65) In order to alleviate the possible impact on the national services related to the recruitment of statutory staff for the standing corps, support should be provided to the relevant services of Member States to cover training investments for new personnel replacing such departing personnel.

(66) In view of the deployment of the standing corps on the territories of third countries, the Agency should develop the capabilities for its own command and control structures as well as a procedure to ensure that the members of the teams can be held civilly and criminally liable.

(67) In order to allow for effective deployments from the standing corps beginning on 1 January **2021**, certain decisions and implementing measures should be taken and put in place as soon as possible. *Therefore, the Agency, together with the Member States and the Commission, should engage in the preparation of such implementing measures and decisions for adoption by the management board. Such a preparatory process should encompass the relevant recruitment by the Agency and the Member States as referred to in this Regulation.*

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(68) In order to ensure the continuity of the support for operational activities organised by the Agency, however, all deployments, including under the rapid reaction pool, to be made by 31 December **2020** should be planned and implemented in accordance with Regulation (EU) 2016/1624 and in accordance with the annual bilateral negotiations carried out in **2019**. To that end, the relevant provisions of that Regulation should only be repealed with effect from 1 January **2021**.

(69) The Agency's workforce should consist of staff performing the tasks devoted to the Agency, either in the Agency's headquarters or as part of the standing corps. Statutory staff within the standing corps should primarily be deployed as members of the teams. It should be possible to recruit only a limited and clearly defined number of statutory staff to perform supportive functions for the establishment of the standing corps, in particular at headquarters.

(70) To overcome the persistent gaps in the voluntary pooling of technical equipment from Member States, in particular as regards large-scale assets, the Agency should have its own necessary equipment to be deployed in joint operations or rapid border interventions or any other operational activities. ***Those assets should be authorised by the Member States as being on government service.*** While the Agency has been legally able to acquire or lease its own technical equipment since 2011, that possibility was significantly hindered by the lack of budgetary resources.

(71) Consequently, in order to match the level of ambition underlying the establishment of the standing corps, the Commission earmarked a significant envelope under the 2021-2027 multiannual financial framework to allow the Agency to acquire, maintain and operate the necessary air, sea and land assets corresponding to its operational needs. While the acquisition of the necessary assets could be a lengthy process, especially for large assets, the Agency's own equipment should ultimately become the backbone of the operational deployments with additional contributions by Member States to be called upon in exceptional circumstances. The Agency's equipment should be largely operated by the Agency's technical crews that are part of the standing corps. In order to ensure the effective use of the proposed financial resources, the acquisition of the necessary assets should be based on a multiannual strategy decided as early as possible by the management board. ***It is necessary to ensure the sustainability of the Agency by means of future multiannual financial frameworks and to maintain comprehensive European integrated border management.***

(72) In the implementation of this Regulation, the Agency and the Member States should make the best possible use of existing capabilities in terms of human resources as well as technical equipment, both at Union and national level.

(73) The long-term development of new capabilities within the European Border and Coast Guard should be coordinated between the Member States and the Agency in line with the multiannual strategic policy cycle for European integrated border management, taking into account the long duration of certain processes. That includes the recruitment and training of new border guards, which, during their career, could serve both in Member States and as part of the standing corps, the acquisition, maintenance and disposal of equipment, for which opportunities for interoperability and economies of scale should be sought, and the development of new equipment and related technologies, including through research.

(74) The capability roadmap should converge the capability development plans of Member States and the multiannual planning of the Agency's resources to optimise long-term investment to best protect the external borders.

(75) Taking into account the enhanced mandate of the Agency, the setting up of the standing corps and its strengthened presence on the ground at the external borders and its increased engagement in the field of return, it should be possible for the Agency to establish antenna offices situated at locations in the proximity of its significant operational activities for the duration of those activities, to act as an interface between the Agency and the host Member State, to deal with coordination and logistical and support tasks and to facilitate cooperation between the Agency and the host Member State.

(76) In light of the fact that inter-agency cooperation forms part of European integrated border management, the Agency should closely cooperate with all relevant Union bodies, offices and agencies, in particular with Europol and EASO. Such cooperation should take place at the level of headquarters, in operational areas and, where relevant, at the level of antenna offices.

(77) The Agency and the Member States, in particular their training academies, should cooperate closely with respect to the training of the standing corps, while ensuring that training programmes are harmonised and foster the common values enshrined in the Treaties. The Agency should be able, after obtaining the approval of the management board, to set up an Agency training centre to facilitate further the inclusion of a common European culture in the training provided.

(78) The Agency should further develop common core curricula and adequate training tools for border management and returns, including specific training on the protection of vulnerable persons, including children. It should also offer additional training courses and seminars related to integrated border management tasks, including for officers of the competent national bodies. The Agency should provide the members of the standing corps with specialised training relevant to their tasks and powers. That should include training on relevant Union and international law and on fundamental rights. The Agency should be authorised to organise training activities in cooperation with Member States and third countries on their territories.

(79) The return of third-country nationals who do not fulfil or who no longer fulfil the conditions for entry, stay or residence in the Member States, in accordance with Directive 2008/115/EC of the European Parliament and of the Council¹², is an essential component of the comprehensive efforts to tackle illegal immigration and represents an important issue of substantial public interest.

(80) The Agency should step up its assistance to Member States for returning third-country nationals, subject to Union return policy and in compliance with Directive 2008/115/EC. In particular, the Agency should coordinate and organise return operations from one or more Member States and organise and conduct return interventions to reinforce the return systems of Member States that require increased technical and operational assistance to comply with their obligation to return third-country nationals in accordance with that Directive.

¹² Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals (OJ L 348, 24.12.2008, p. 98).

(81) The Agency should, in full respect for fundamental rights and without prejudice to the Member States' responsibility for issuing return decisions, provide technical and operational assistance to Member States in the return process, including ■ in the identification of third-country nationals and in other pre-return and return-related activities of the Member States. In addition, the Agency should assist Member States in the acquisition of travel documents for return, in cooperation with the authorities of the relevant third countries.

(82) *The Agency should allow, subject to the agreement of the Member State concerned, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment of the Council of Europe to conduct visits to where it carries out return operations, within the framework of the monitoring mechanism established by the members of the Council of Europe under the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment.*

(83) The assistance to Member States in carrying out return procedures should include the provision of practical information on third countries of return relevant for the implementation of this Regulation, such as the provision of contact details or other logistical information necessary for the smooth *and dignified* conduct of return operations. The assistance should also include *the operation and maintenance of a platform for the exchange of data and information* ■ necessary for the Agency to provide technical and operational assistance in accordance with this Regulation. *That platform should have a communication infrastructure enabling the automated transmission of statistical data* by the Member States' return management systems.

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(84) The possible existence of an arrangement between a Member State and a third country does not absolve the Agency or the Member States from their obligations *or liability* under Union or international law, in particular as regards compliance with the principle of *non-refoulement and the prohibition of torture and inhuman or degrading treatment*.

(85) Member States should be able to cooperate at operational level with other Member States or third countries at the external borders, including as regards military operations with a law enforcement purpose, to the extent that that cooperation is compatible with the actions of the Agency.

(86) The Agency should improve the exchange of information and cooperation with other Union bodies, offices and agencies, such as Europol, *EASO*, EMSA, the European Union Satellite Centre, EASA and the Network Manager of the EATMN in order to make the best use of information, capabilities and systems which are already available at European level, such as Copernicus, the Union Earth observation and monitoring programme.

(87) Cooperation with third countries is an *important* element of European integrated border management. It should serve to promote European border management and return standards, to exchange information and risk analysis, *and* to facilitate the implementation of returns with a view to increasing their efficiency and to supporting third countries in the area of border management and migration, including through the deployment of the standing corps where such support is required to protect external borders and the effective management of the Union's migration policy.

(88) Where the Commission recommends that the Council authorise it to negotiate a status agreement with a third country, the Commission should assess the fundamental rights situation relevant to the areas covered by the status agreement in that third country and inform the European Parliament thereof.

(89) Cooperation with third countries should take place in the framework of the external action of the Union and in line with the principles and objectives laid down in Article 21 of the Treaty on European Union (TEU). The Commission should ensure consistency between European integrated border management and other Union policies in the field of the Union's external action and, in particular, the Common Security and Defence Policy. The Commission should be assisted by the High Representative of the Union for Foreign Affairs and Security Policy. Such cooperation should take place with regard to, in particular, the activities of the Agency taking place on the territory of third countries or involving the officials of third countries in areas such as risk analysis, planning and conduct of operations, training, information exchange and cooperation.

(90) In order to ensure that the information contained in EUROSUR is as complete and up to date as possible, in particular with regard to the situation in third countries, the Agency should cooperate with the authorities of third countries either in the framework of bilateral and multilateral agreements between the Member States and third countries, including regional networks, or through working arrangements concluded between the Agency and the relevant authorities of third countries. For those purposes, the European External Action Service and Union delegations and offices should provide all information that could be relevant for EUROSUR.

(91) This Regulation includes provisions on cooperation with third countries because well-structured and permanent exchange of information and cooperation with such countries, including but not limited to neighbouring third countries, are key factors for achieving the objectives of European integrated border management. It is essential that any exchange of information and any cooperation between Member States and third countries take place in full compliance with fundamental rights.

(92) The assistance to third countries should complement the Agency's support for Member States in the application of Union measures relating to the implementation of European integrated border management.

(93) It should be possible for the bilateral and multilateral agreements concluded by Member States with third countries in the areas covered by European integrated border management to contain security sensitive information. Where notified to the Commission, such information should be handled by the Commission in accordance with the applicable security rules.

(94) To establish a comprehensive situational picture and risk analysis covering the pre-frontier area, the Agency and the national coordination centres should collect information and coordinate with immigration liaison officers deployed in third countries by Member States, the Commission, the Agency or other Union bodies, offices and agencies.

(95) The False and Authentic Documents Online ('FADO') system was established by Council Joint Action 98/700/JHA¹³ within the General Secretariat of the Council enabling Member States' authorities to have at their disposal information on any new forgery methods that are detected and on the new genuine documents that are in circulation.

(96) In its conclusions of 27 March 2017, the Council stated that the management of the FADO system is outdated and that a change of its legal basis is required in order to continue meeting the requirements of justice and home affairs policies. The Council also noted that synergies could be exploited in that regard using the Agency's expertise in the area of document fraud and the work the Agency has already been carrying out in the field. It is therefore intended that the Agency take over the administration and the operational and technical management of the FADO system from the General Secretariat of the Council as soon as *the European Parliament and the Council have adopted the relevant legal act on the FADO system replacing Joint Action 98/700/JHA*.

¹³ Joint Action 98/700/JHA of 3 December 1998 adopted by the Council on the basis of Article K.3 of the Treaty on European Union concerning the setting up of a European Image Archiving System (FADO) (*OJ L 333, 9.12.1998, p. 4*).



(97) Prior to the adoption of the relevant legal act on the FADO system, it is desirable to ensure that the FADO system is fully operational until the transfer is effectively carried out and the existing data are transferred to the new system. The ownership of the existing data would then be transferred to the Agency.

(98) Any processing of personal data by the Agency within the framework of this Regulation should be conducted in accordance with Regulation (EU) 2018/1725 of the *European Parliament and of the Council*¹⁴.

(99) Any processing of personal data by Member States within the framework of this Regulation should be conducted in accordance with Regulation (EU) 2016/679 of the European Parliament and of the Council¹⁵ or Directive (EU) 2016/680 of the European Parliament and of the Council¹⁶, as applicable.

¹⁴ *Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p. 39).*

¹⁵ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 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) (OJ L 119, 4.5.2016, p. 1).

¹⁶ Directive (EU) 2016/680 of the European Parliament and of the Council 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 the 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 (OJ L 119, 4.5.2016, p. 89).

(100) In the context of return, third-country nationals frequently do not hold any identification documents and do not cooperate as regards the establishment of their identity by withholding information or providing incorrect personal data. Given the particular policy need for expedient return procedures, it is necessary for the Agency to be able to restrict certain rights of data subjects so as to prevent the abuse of such rights from impeding the proper implementation of return procedures and the successful enforcement of return decisions by the Member States or from preventing the Agency from performing its tasks efficiently. In particular, the exercise of the right to the restriction of processing could significantly delay and obstruct the carrying out of the return operations. Furthermore, in some cases, the right of access by the third-country national could jeopardise a return operation by increasing the risk of absconding should the third-country national learn that the Agency is processing his or her data in the context of a planned return operation. The right to rectification could increase the risk that the third-country national in question will mislead the authorities by providing incorrect data. ***In order to enable the Agency to restrict certain rights of data subjects, it should be able to adopt internal rules on such restrictions.***

(101) In order to properly implement its tasks in the area of return, including by assisting Member States in the proper implementation of return procedures and the successful enforcement of return decisions, as well as to facilitate return operations, the Agency might need to transfer the personal data of returnees to third countries. The third countries of return are not often subject to adequacy decisions adopted by the Commission under Article 45 of Regulation (EU) 2016/679 or under Article 36 of Directive (EU) 2016/680, and have often not concluded or do not intend to conclude a readmission agreement with the Union or otherwise provide for appropriate safeguards within the meaning of Article **48** of **Regulation (EU) 2018/1725** or within the meaning of the national provisions transposing Article 37 of Directive (EU) 2016/680. However, despite the extensive efforts of the Union in cooperating with the main countries of origin of *illegally* staying third-country nationals subject to an obligation to return, it is not always possible to ensure that such third countries systematically comply with the obligation established by international law to readmit their own nationals. Readmission agreements concluded or being negotiated by the Union or the Member States which provide for appropriate safeguards for personal data cover a limited number of such third countries. Where such agreements do not yet exist, personal data should be transferred by the Agency for the purposes of facilitating the return operations of the Union, provided that the conditions laid down in point (d) of Article **50(1)** of Regulation (EU) **2018/1725** are met.

(102) Any transfer of personal data by Member States to third countries should be carried out in accordance with Regulation (EU) 2016/679 and Directive (EU) 2016/680, as applicable. In the absence of readmission agreements, and as an exception to the requirement that adequacy decisions have been adopted or appropriate safeguards have been provided for, it should be possible for Member States to transfer personal data to the authorities of third countries for the purposes of implementing Union return policy. It should be possible to use the derogation for specific situations provided for in Article 49 of Regulation (EU) 2016/679 and Article 38 of Directive (EU) 2016/680, as applicable, subject to the conditions set out in those articles.

(103) This Regulation respects the fundamental rights and observes the principles recognised by Articles 2 and 6 TEU and by the Charter of Fundamental Rights of the European Union ('the Charter'), in particular respect for human dignity, the right to life, the prohibition of torture and inhuman or degrading treatment or punishment, the prohibition of trafficking in human beings, the right to liberty and security, the right to the protection of personal data, the right of access to documents, the right to asylum and to protection against removal and expulsion, *non-refoulement*, non-discrimination and the rights of the child.

(104) This Regulation should establish a complaints mechanism for the Agency in cooperation with the fundamental rights officer, to safeguard the respect for fundamental rights in all the activities of the Agency. This should be an administrative mechanism whereby the fundamental rights officer should be responsible for handling complaints received by the Agency in accordance with the right to good administration. The fundamental rights officer should review the admissibility of a complaint, register admissible complaints, forward all registered complaints to the executive director, forward complaints concerning members of the teams to the home Member State, and register the follow-up by the Agency or that Member State. The mechanism should be effective, ensuring that complaints are properly followed up. The complaints mechanism should be without prejudice to access to administrative and judicial remedies and not constitute a requirement for seeking such remedies. Criminal investigations should be conducted by the Member States. In order to increase transparency and accountability, the Agency should report on the complaints mechanism in its annual report. The report should cover in particular the number of complaints it has received, the types of fundamental rights violations involved, the operations concerned and, where possible, the follow-up measures taken by the Agency and Member States. The fundamental rights officer should have access to all information concerning respect for fundamental rights in relation to all the activities of the Agency. ***The fundamental rights officer should be provided with the resources and staff necessary to enable him or her to effectively perform all his or her tasks in accordance with this Regulation. The staff provided to the fundamental rights officer should have the skills and seniority that correspond to the expansion of activities and powers of the Agency.***

(105) The Agency should be independent as regards technical and operational matters and have legal, administrative and financial autonomy. To that end, it is necessary and appropriate that it should be a Union body having legal personality and exercising the implementing powers that are conferred upon it by this Regulation.

(106) The Commission and the Member States should be represented within a management board to exercise oversight over the Agency. The management board should, where possible, consist of the operational heads of the national services responsible for border management or their representatives. The parties represented in the management board should make efforts to limit turnover of their representatives in order to ensure continuity of the management board's work. The management board should be entrusted with the necessary powers to establish the Agency's budget, verify its execution, adopt appropriate financial rules, establish transparent working procedures for decision-making by the Agency and appoint the executive director and three deputy executive directors, each of whom should be assigned responsibilities in a certain field of competence of the Agency, such as managing the standing corps, overseeing the Agency's tasks regarding returns or managing the Agency's involvement in large-scale IT systems. The Agency should be governed and operated taking into account the principles of the common approach on Union decentralised agencies adopted on 19 July 2012 by the European Parliament, the Council and the Commission.

(107) Given the involvement of the European Parliament in the matters governed by this Regulation, the chairperson of the management board should be able to invite an expert of the European Parliament to attend the meetings of the management board.

(108) Each year, the management board should prepare a single programming document. When preparing that document, the management board should take into account the recommendations of the Interinstitutional Working Group on decentralised agencies' resources.

(109) In order to guarantee the autonomy of the Agency, it should be granted a stand-alone budget with a revenue which comes mostly from a contribution from the Union. ***The Agency's budget should be prepared in accordance with the principle of performance-based budgeting, taking into account the Agency's objectives and the expected results of its tasks.*** The Union budgetary procedure should be applicable as far as the Union contribution and any other subsidies chargeable to the general budget of the Union are concerned. The auditing of accounts should be undertaken by the Court of Auditors. ***In exceptional situations where the available budget is deemed insufficient and the budgetary procedure does not allow an adequate response to fast-developing situations, the Agency should have the possibility of receiving grants from Union funds to fulfil its tasks.***

(110) The executive director, in his or her capacity as an authorising officer, should assess the financial risks related to the Agency's activities on a regular basis and take the necessary mitigating measures in accordance with the financial framework applicable to the Agency and inform the management board accordingly.

(111) The Agency is expected to face challenging circumstances in the coming years as regards fulfilling exceptional needs for recruiting and retaining qualified staff from the broadest possible geographical basis.

(112) In the spirit of shared responsibility, the Agency should require the staff it employs, in particular the statutory staff of the standing corps, including statutory staff deployed in operational activities, to possess the same level of training, special expertise and professionalism as staff seconded or employed by the Member States. Therefore, the Agency should review and evaluate whether its statutory staff conduct themselves properly in operational activities in the field of border control and return.

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(113) Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council¹⁷ should apply without restriction to the Agency, which should accede to the Interinstitutional Agreement of 25 May 1999 between the European Parliament, the Council of the European Union and the Commission of the European Communities concerning internal investigations by the European Anti-Fraud Office (OLAF)¹⁸.

(114) In accordance with Council Regulation (EU) 2017/1939¹⁹, the European Public Prosecutor's Office should be able to investigate and prosecute fraud and other criminal offences affecting the Union's financial interests as provided for in Directive (EU) 2017/1371 of the European Parliament and of the Council²⁰.

¹⁷ 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).

¹⁸ OJ L 136, 31.5.1999, p. 15.

¹⁹ Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office ('the EPPO') (OJ L 283, 31.10.2017, p. 1).

²⁰ Directive (EU) 2017/1371 of the European Parliament and of the Council of 5 July 2017 on the fight against fraud to the Union's financial interests by means of criminal law (OJ L 198, 28.7.2017, p. 29).

(115) Regulation (EC) No 1049/2001 of the European Parliament and of the Council²¹ should apply to the Agency. The Agency should be as transparent as possible about its activities, without jeopardising the attainment of the objective of its operations. It should make public the information about all of its activities. It should likewise ensure that the public and any interested party are rapidly given information with regard to its work.

(116) The Agency should also report on its activities to the European Parliament, to the Council and to the Commission to the fullest extent.

²¹ 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).

(117) The Commission should carry out an evaluation of this Regulation. That evaluation should assess, inter alia, the attractiveness of the Agency as an employer for the recruitment of statutory staff with a view to ensuring the quality of the candidates and geographical balance.

(118) The external borders referred to in this Regulation are those to which the provisions of Title II of Regulation (EU) 2016/399 apply, which includes the external borders of Schengen Member States in accordance with Protocol No 19 on the Schengen *acquis* integrated into the framework of the European Union, annexed to the TEU and to the Treaty on the Functioning of the European Union (TFEU).

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(119) In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council²².

²² Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).

(120) Since the objectives of this Regulation, namely the development and implementation of a system of integrated management of the external borders to ensure the proper functioning of the Schengen area, cannot be sufficiently achieved by the Member States acting in an uncoordinated manner but can rather, by reason of the absence of controls at internal borders, the significant migratory challenges at the external borders, the need to monitor efficiently the crossing of those borders, and the need to contribute to a high level of internal security within the Union, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 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.

(121) As regards Iceland and Norway, this Regulation constitutes a development of the provisions of the Schengen *acquis* within the meaning of the Agreement concluded by the Council of the European Union and the Republic of Iceland and the Kingdom of Norway concerning the latter's association with the implementation, application and development of the Schengen *acquis*²³, which fall within the area referred to in Article 1, point A of Council Decision 1999/437/EC²⁴. The Arrangement between the European Community and the Republic of Iceland and the Kingdom of Norway on the modalities of the participation by those States in the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union²⁵ provides for rules on the participation by those countries in the work of the Agency, including provisions on financial contributions and staff.

²³ OJ L 176, 10.7.1999, p. 36.

²⁴ Council Decision 1999/437/EC of 17 May 1999 on certain arrangements for the application of the Agreement concluded by the Council of the European Union and the Republic of Iceland and the Kingdom of Norway concerning the association of those two States with the implementation, application and development of the Schengen *acquis* (OJ L 176, 10.7.1999, p. 31).

²⁵ OJ L 188, 20.7.2007, p. 19.

(122) As regards Switzerland, this Regulation constitutes a development of the provisions of the Schengen *acquis* within the meaning of the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis*²⁶ which fall within the area referred to in Article 1, point A of Decision 1999/437/EC read in conjunction with Article 3 of Council Decision 2008/146/EC²⁷.

(123) As regards Liechtenstein, this Regulation constitutes a development of the provisions of the Schengen *acquis* within the meaning of the Protocol between the European Union, the European Community, the Swiss Confederation and the Principality of Liechtenstein on the accession of the Principality of Liechtenstein to the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis*²⁸ which fall within the area referred to in Article 1, point A of Decision 1999/437/EC read in conjunction with Article 3 of Council Decision 2011/350/EU²⁹.

²⁶ OJ L 53, 27.2.2008, p. 52.

²⁷ Council Decision 2008/146/EC of 28 January 2008 on the conclusion, on behalf of the European Community, of the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis* (OJ L 53, 27.2.2008, p. 1).

²⁸ OJ L 160, 18.6.2011, p. 21.

²⁹ Council Decision 2011/350/EU of 7 March 2011 on the conclusion, on behalf of the European Union, of the Protocol between the European Union, the European Community, the Swiss Confederation and the Principality of Liechtenstein on the accession of the Principality of Liechtenstein to the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis*, relating to the abolition of checks at internal borders and movement of persons (OJ L 160, 18.6.2011, p. 19).

(124) The Arrangement between the European Community, of the one part, and the Swiss Confederation and the Principality of Liechtenstein, of the other part, on the modalities of the participation by those States in the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union³⁰ provides for rules on the participation by those countries in the work of the Agency, including provisions on financial contributions and staff.

(125) In accordance with Articles 1 and 2 of Protocol No 22 on the position of Denmark annexed to the TEU and to the TFEU, Denmark is not taking part in the adoption of this Regulation and is not bound by it, or subject to its application. Given that this Regulation builds upon the Schengen *acquis*, Denmark shall, in accordance with Article 4 of that Protocol, decide within a period of six months after the Council has decided on this Regulation whether it will implement it in its national law.

³⁰ OJ L 243, 16.9.2010, p. 4.

(126) This Regulation constitutes a development of provisions of the Schengen *acquis* in which the United Kingdom does not take part, in accordance with Council Decision 2000/365/EC³¹; the United Kingdom is therefore not taking part in the adoption of this Regulation and is not bound by it or subject to its application.

(127) This Regulation constitutes a development of provisions of the Schengen *acquis* in which Ireland does not take part, in accordance with Council Decision 2002/192/EC³²; Ireland is therefore not taking part in the adoption of this Regulation and is not bound by it or subject to its application.

³¹ Council Decision 2000/365/EC of 29 May 2000 concerning the request of the United Kingdom of Great Britain and Northern Ireland to take part in some of the provisions of the Schengen *acquis* (OJ L 131, 1.6.2000, p. 43).

³² Council Decision 2002/192/EC of 28 February 2002 concerning Ireland's request to take part in some of the provisions of the Schengen *acquis* (OJ L 64, 7.3.2002, p. 20).

(128) The Agency should facilitate the organisation of specific activities in which the Member States may avail themselves of the expertise and facilities which Ireland and the United Kingdom may be willing to offer, on terms to be decided on a case-by-case basis by the management board. To that end, representatives of Ireland may be invited to attend meetings of the management board which allow them to participate fully in the preparation of such specific activities. Representatives of the United Kingdom may be invited to attend the meetings of the management board until the day on which the Treaties cease to apply to the United Kingdom pursuant to Article 50(3) TEU.

(129) Although the United Kingdom does not participate in this Regulation, it has been granted the possibility to cooperate with the European Border and Coast Guard in view of its position as a Member State. In view of the submission by the United Kingdom of the notification of its intention to withdraw from the Union pursuant to Article 50 TEU, special arrangements applicable to the operational cooperation with the United Kingdom on the basis of this Regulation should be applicable until the day on which the Treaties cease to apply to the United Kingdom pursuant to Article 50(3) TEU or provided that a withdrawal agreement concluded with the United Kingdom in accordance with Article 50 TEU that regulates such special arrangements has entered into force.

(130) A controversy exists between the Kingdom of Spain and the United Kingdom on the demarcation of the borders of Gibraltar.

(131) The suspension of the applicability of this Regulation to the borders of Gibraltar does not imply any change in the respective positions of the States concerned.

(132) ■ The European ■ Data Protection Supervisor was consulted in accordance with Article 28(2) of Regulation (EC) No 45/2001 of the European Parliament and of the Council³³ *on 7 November 2018* and delivered an opinion on *30 November 2018*.

(133) This Regulation aims to amend and expand the provisions of Regulations (EU) 2016/1624 and (EU) No 1052/2013. Since the amendments to be made are substantial in number and nature, those legal acts should, for the sake of clarity, be repealed,

HAVE ADOPTED THIS REGULATION:

³³ 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).

CHAPTER I

European Border and Coast Guard

Article 1

Subject matter

This Regulation establishes a European Border and Coast Guard to ensure European integrated border management at the external borders with a view to managing those borders efficiently *in full compliance with fundamental rights* and to increasing the efficiency of the Union return policy .

This Regulation addresses migratory challenges and potential future challenges and threats at the external borders. It ensures a high level of internal security within the Union in full respect of fundamental rights, while safeguarding the free movement of persons within the Union. It contributes to the detection, prevention and combating of cross-border crime at the external borders.

Article 2
Definitions

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

- (1) 'external borders' means external borders as defined in point 2 of Article 2 of Regulation (EU) 2016/399 ■ ;
- (2) 'border crossing point' means border crossing point as defined in point 8 of Article 2 of Regulation (EU) 2016/399;
- (3) 'border control' means border control as defined in point 10 of Article 2 of Regulation (EU) 2016/399;

(4) *'border checks' means border checks as defined in point 11 of Article 2 of Regulation (EU) 2016/399;*

(5) 'border surveillance' means border surveillance as defined in point 12 of Article 2 of Regulation (EU) 2016/399;

(6) ‘air border surveillance’ means the surveillance of any flight of a manned or unmanned aircraft and its passengers or cargo to or from the territory of the Member States which is not an internal flight as defined in point 3 of Article 2 of Regulation (EU) 2016/399;

;

(7) ‘situational awareness’ means the ability to monitor, detect, identify, track and understand illegal cross-border activities in order to find reasoned grounds for reaction measures on the basis of combining new information with existing knowledge, and to be better able to reduce the loss of lives of migrants at, along or in the proximity of the external borders;

(8) ‘reaction capability’ means the ability to perform actions aimed at countering illegal cross-border activities at, along or in the proximity of the external borders, including the means and timelines to react adequately;

(9) 'EUROSUR' means the framework for information exchange and cooperation between the Member States and the European Border and Coast Guard Agency;

(10) 'situational picture' means an aggregation of geo-referenced near-real-time data and information received from different authorities, sensors, platforms and other sources which is transmitted across secured communication and information channels and can be processed and selectively displayed and shared with other relevant authorities in order to achieve situational awareness and support the reaction capability at, along or in the proximity of the external borders and the pre-frontier area;

(11) ‘external border section’ means the whole or a part of the external border of a Member State, as defined by national law or as determined by the national coordination centre or any other responsible national authority;

(12) ‘cross-border crime’ means any serious crime with a cross-border dimension that is committed or attempted at, along or in the proximity of the external borders;

(13) ‘pre-frontier area’ means the geographical area beyond the external borders *which is relevant for managing the external borders through risk analysis and situational awareness*;

(14) ‘incident’ means a situation relating to illegal immigration, cross-border crime, or a risk to the lives of migrants at, along or in the proximity of, the external borders;

(15) ‘statutory staff’ means staff employed by the European Border and Coast Guard Agency in accordance with the Staff Regulations of Officials of the European Union (the ‘Staff Regulations’) and the Conditions of Employment of Other Servants of the Union (the ‘Conditions of Employment’) laid down in Council Regulation (EEC, Euratom, ECSC) No 259/68³⁴;

³⁴ OJ L 56, 4.3.1968, p. 1.

(16) ‘operational staff’ means border guards, return escorts, return specialists and other relevant staff constituting the European Border and Coast Guard standing corps *in* accordance with the *four* categories *set out in* Article 54(1), acting as members of the teams having executive powers, where applicable, *and* the statutory staff responsible for the functioning of the European Travel Information and Authorisation System (ETIAS) Central Unit that are *not deployable as members of the teams*;

(17) ‘member of the teams’ means a member of the European Border and Coast Guard standing corps deployed through border management teams, migration management support teams and return teams;

(18) ‘border management teams’ means teams formed from the European Border and Coast Guard standing corps to be deployed during joint operations at the external borders and rapid border interventions in Member States and third countries;

(19) ‘migration management support teams’ means teams of experts which provide technical and operational reinforcement to Member States, including at hotspot areas ■, composed of operational staff, experts from *the European Asylum Support Office (EASO)* and Europol *and, where relevant, experts from the European Union Agency for Fundamental Rights (FRA)*, other ■ Union bodies, offices and agencies and Member States;

(20) ‘host Member State’ means a Member State in which a joint operation or a rapid border intervention, a return operation or a return intervention takes place, or from which it is launched, or in which a migration management support team is deployed;

(21) ‘home Member State’ means the Member State from which a staff member is deployed or seconded to the European Border and Coast Guard standing corps;

(22) ‘participating Member State’ means a Member State which participates in a joint operation, rapid border intervention, return operation, return intervention or in a deployment of a migration management support team, by providing technical equipment or staff of the European Border and Coast Guard standing corps, as well as a Member State which participates in return operations or return interventions by providing technical equipment or staff, but which is not a host Member State;

(23) ‘hotspot area’ means an area *created at the request of the host Member State* in which the host Member State, the Commission, relevant Union agencies and participating Member States cooperate, with the aim of managing an existing or potential disproportionate migratory challenge characterised by a significant increase in the number of migrants arriving at the external borders;

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(24) ‘return’ means return as defined in point 3 of Article 3 of Directive 2008/115/EC;

(25) ‘return decision’ means *an administrative or judicial decision or act stating or declaring the stay of a third-country national to be illegal and imposing or stating an obligation to return that respects Directive 2008/115/EC*;

(26) ‘returnee’ means an illegally staying third-country national who is the subject of an enforceable return decision;

(27) ‘return operation’ means an operation that is organised or coordinated by the European Border and Coast Guard Agency and involves technical and operational reinforcement provided to one or more Member States ■ under which returnees from one or more Member States ■ are returned, either on a forced or voluntary basis, irrespective of the means of transport;

(28) ‘return intervention’ means an activity of the European Border and Coast Guard Agency providing Member States ■ with enhanced technical and operational assistance consisting of the deployment of return teams and the organisation of return operations;

(29) ‘return teams’ means teams formed from the European Border and Coast Guard standing corps to be deployed during return operations, return interventions in Member States or other operational activities linked to the implementation of return-related tasks;

(30) ‘immigration liaison officer’ means immigration liaison officer as defined in point 1 of Article 2 of Regulation (EU) 2019/1240 of the European Parliament and of the Council ³⁵.

³⁵ Regulation (EU) 2019/1240 of the European Parliament and of the Council of 20 June 2019 on the creation of a European network of immigration liaison officers (OJ L 198, 25.7.2019, p. 88).

Article 3

European integrated border management

1. European integrated border management shall consist of the following components:

(a) border control, including measures to facilitate legitimate border crossings and, where appropriate: measures related to the prevention and detection of cross-border crime ***at the external borders, in particular*** migrant smuggling, trafficking in human beings, and terrorism; and ***mechanisms and procedures for the identification of vulnerable persons and unaccompanied minors, and for the identification of persons who are in need of international protection or wish to apply for such protection, the provision of information to such persons, and the*** referral of such persons;;

- (b) search and rescue operations for persons in distress at sea launched and carried out in accordance with Regulation (EU) No 656/2014 and with international law, taking place in situations which may arise during border surveillance operations at sea;
- (c) analysis of the risks for internal security and analysis of the threats that may affect the functioning or security of the external borders;
- (d) information exchange and cooperation between Member States *in the areas covered by this Regulation, as well as information exchange and cooperation between Member States* and the European Border and Coast Guard Agency, *including the support coordinated by the European Border and Coast Guard Agency*;

- (e) inter-agency cooperation among the national authorities in each Member State which are responsible for border control or for other tasks carried out at the border, as well as between authorities responsible for return in each Member State, including the regular exchange of information through existing information exchange tools, including, *where appropriate, cooperation with national bodies in charge of protecting fundamental rights;*
- (f) cooperation among the relevant Union institutions, bodies, offices and agencies in the areas covered by this Regulation, including through regular exchange of information;
- (g) cooperation with third countries in the areas covered by this Regulation, *focusing in particular on neighbouring third countries and on those third countries which have been identified through risk analysis as being countries of origin or transit for illegal immigration;*

- (h) technical and operational measures within the Schengen *area* which are related to border control and designed to address *illegal immigration* and to counter cross-border crime better;
- (i) the return of third-country nationals who are the subject of return decisions issued by a Member State;
- (j) the use of state-of-the-art technology including large-scale information systems;
- (k) a quality control mechanism, in particular the Schengen evaluation mechanism, the vulnerability assessment and possible national mechanisms, to ensure the implementation of Union law in the area of border management;

(1) solidarity mechanisms, in particular Union funding instruments.

2. *Fundamental rights, education and training, as well as research and innovation shall be overarching components in the implementation of European integrated border management.*

Article 4

European Border and Coast Guard

The national authorities of Member States responsible for border management, including coast guards to the extent that they carry out border control tasks, the national authorities responsible for return *and the European Border and Coast Guard Agency ('the Agency')* shall constitute the European Border and Coast Guard.

Article 5

European Border and Coast Guard Agency

1. The Agency shall be governed by this Regulation.

2. The Agency shall include the European Border and Coast Guard standing corps (*‘the standing corps’*) referred to in Article 54 with a capacity of up to 10 000 operational staff in accordance with Annex I.
3. To ensure coherent European integrated border management, the Agency shall facilitate and render more effective the application of Union measures relating to the management of the external borders , in particular Regulation (EU) 2016/399, and of Union measures relating to return.
4. The Agency shall contribute to the continuous and uniform application of Union law, including the Union *acquis* on fundamental rights, in particular the Charter of Fundamental Rights of the European Union (*‘the Charter’*), at external borders. Its contribution shall include the exchange of good practices.

Article 6
Accountability

The Agency shall be accountable to the European Parliament and to the Council in accordance with this Regulation.

Article 7
Shared responsibility

1. The European Border and Coast Guard shall implement European integrated border management as a shared responsibility of the Agency and of the national authorities responsible for border management, including coast guards to the extent that they carry out maritime border surveillance operations and any other border control tasks. Member States shall retain primary responsibility for the management of their sections of the external borders.

2. The Agency shall provide technical and operational assistance in the implementation of measures relating to ***return as referred to in Article 48 of this Regulation, upon request of the Member State concerned or on its own initiative and with the agreement of the Member State concerned***. Member States shall retain ***sole*** responsibility for issuing return decisions and ***for adopting*** the measures pertaining to the detention of returnees in accordance with Directive 2008/115/EC.

3. Member States shall ensure the management of their external borders and the enforcement of return decisions, in close cooperation with the Agency, in their own interests and in the common interest of all Member States in full compliance with Union law, ***including respect for fundamental rights***, and in accordance with the multiannual strategic policy cycle for European integrated border management referred to in Article 8.

4. The Agency shall support the application of Union measures relating to the management of the external borders and the enforcement of return decisions by reinforcing, assessing and coordinating the actions of Member States and by providing ■ technical and operational assistance in the implementation of those measures and in return matters. ***The Agency shall not support any measures or be involved in any activities related to controls at internal borders. The Agency shall be fully responsible and accountable for any decision it takes and for any activity for which it is solely responsible under this Regulation.***

5. Member States may *cooperate* at an operational level with other Member States or third countries, where such cooperation is compatible with the tasks of the Agency. Member States shall refrain from any activity which could jeopardise the functioning of the Agency or the attainment of its objectives. Member States shall report to the Agency on that operational cooperation with other Member States or third countries at the external borders and in the field of return. The executive director shall inform the management board of such matters on a regular basis and at least once a year.

Article 8

Multiannual strategic policy cycle for European integrated border management

1. The Commission and the European Border and Coast Guard shall ensure the effectiveness of European integrated border management by means of a multiannual strategic policy cycle *that is adopted in accordance with the procedure laid down in paragraph 4.*
2. The multiannual strategic policy for the European integrated border management shall set out how the challenges in the area of border management and returns are to be addressed in a coherent, integrated and systematic manner. *It shall set out the policy priorities and provide strategic guidelines for a period of five years in relation to the components set out in Article 3.*

3. The multiannual strategic policy cycle for European integrated border management shall consist of four stages as set out in paragraphs 4 to 7.

4. On the basis of the strategic risk analysis for European integrated border management referred to in Article 29(2), the Commission shall *prepare a policy document* developing a multiannual strategic policy for European integrated border management. *The Commission shall submit that policy document to the European Parliament and to the Council for discussion. Following that discussion, the Commission shall adopt a communication establishing the multiannual strategic policy for European integrated border management.*

5. In order to implement the *multiannual strategic policy for European integrated border management*, the Agency shall, by a decision of the management board, on the basis of a proposal from the executive director that is *prepared in close cooperation with the Member States and the Commission*, establish a technical and operational strategy for European integrated border management. Where justified, the Agency shall take into account the specific situations of the Member States, in particular their geographical locations. The technical and operational strategy shall be in line with Article 3 and the *multiannual strategic policy for European integrated border management*. It shall promote and support the implementation of European integrated border management in all Member States.

6. In order to implement the *multiannual strategic policy for European integrated border management*, the Member States shall establish national strategies for *European integrated border management* through close cooperation between all national authorities responsible for the management of *external* borders and return. Those national strategies shall be in line with Article 3, the *multiannual strategic policy for European integrated border management* and the technical and operational strategy.

7. *Four years* after the adoption of the *multiannual strategic policy for European integrated border management*, the Commission shall carry out **■** a thorough evaluation of its implementation. The results of that evaluation shall be taken into account in the preparation of the following multiannual strategic policy cycle. *Member States and the Agency shall provide the Commission with the necessary information in a timely manner for the carrying out of that evaluation. The Commission shall communicate the results of that evaluation to the European Parliament and to the Council.*

8. Where the situation at the external borders or in the area of return requires a change of the policy priorities, the Commission shall amend the multiannual strategic policy for European integrated border management *or relevant parts thereof* in accordance with the procedure set out in paragraph 4.

Where the Commission amends the multiannual strategic policy as provided for in the first subparagraph, the technical and operational strategy and the national strategies █ shall, where *necessary*, be adapted.

Article 9

Integrated planning

1. On the basis of the multiannual strategic policy cycle for European integrated border management, the European Border and Coast Guard shall establish an integrated planning process for border management and returns, *including* operational planning, contingency planning and capability development planning processes. That integrated planning process shall be established in accordance with *paragraphs 2, 3 and 4 of this Article*.

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2. Member States and the Agency shall adopt operational plans for border management and returns. The operational plans of Member States related to border sections with high and critical impact levels shall be coordinated with neighbouring Member States and with the Agency with a view to implementing the necessary cross-border measures and providing for support by the Agency. For the activities of the Agency, operational planning processes for the following year shall be set out in an annex to the single programming document referred to in Article 102. For each specific operational activity, operational planning processes shall result in the operational plans referred to in Article 38 and Article 74(3). The operational plans or parts thereof may be classified where appropriate, in accordance with Article 92.

3. Member States shall each adopt a contingency plan for the management of their borders and returns. In line with national integrated border management strategies, the contingency plans shall describe all the necessary measures and resources for the possible reinforcement of capabilities, including logistics and support both at national level and from the Agency.

The part of the contingency plans that requires additional support from the European Border and Coast Guard shall be jointly prepared by the Member State concerned and the Agency, in close coordination with neighbouring Member States.

4. Member States shall adopt national capability development plans for border management and returns in line with their national integrated border management strategies. Those national capability development plans shall describe the medium- to long-term evolution of the national capabilities for border management and returns.

The national capability development plans shall address the development of each component of European integrated border management, in particular the recruitment and training policy of border guards and return specialists, the acquisition and maintenance of equipment, necessary research and development activities, and the corresponding funding requirements and sources.

5. The contingency plans and national capability development plans referred to in paragraphs 3 and 4 shall be based on scenarios that are derived from risk analysis. Those scenarios shall reflect the possible evolution of the situation at the external borders and in the area of illegal immigration and the challenges identified in the multiannual strategic policy cycle for European integrated border management. Those scenarios shall be set out in the contingency plans and national capability development plans to which they relate.

6. The methodology and the procedure for establishing the plans referred to in paragraphs 3 and 4 shall be adopted by the management board, after consultation with the Member States, on the basis of a proposal of the executive director.

7. The Agency shall prepare an overview of the national capability development plans and a multiannual strategy for the acquisition of the Agency's equipment referred to in Article 63 and the multiannual planning for profiles of staff for the standing corps.

The Agency shall share that overview with the Member States and with the Commission with a view to identifying possible synergies and opportunities for cooperation in the various areas covered by the national capability development plans, including joint procurement. On the basis of the identified synergies, the Agency may invite the Member States to participate in follow-up actions for cooperation.

8. The management board shall meet at least once a year to discuss and approve the capability roadmap of the European Border and Coast Guard. The capability roadmap shall be proposed by the executive director on the basis of the overview of the national capability development plans, taking into account, inter alia, the results of the risk analysis and vulnerability assessments carried out in accordance with Articles 29 and 32 and the Agency's own multiannual plans. Once the capability roadmap is approved by the management board, it shall be annexed to the technical and operational strategy referred to in Article 8(5).

CHAPTER II

Functioning of the European Border and Coast Guard

SECTION 1

TASKS OF THE EUROPEAN BORDER AND COAST GUARD AGENCY

Article 10

Tasks of the European *Border and Coast Guard Agency*

1. The Agency shall perform the following tasks **■** :
 - (a) monitor migratory flows and carry out risk analysis as regards all aspects of integrated border management;
 - (b) monitor the operational needs of Member States related to the implementation of returns, including by collecting operational data;
 - (c) carry out vulnerability assessments, including assessments of the capacity and readiness of Member States to face threats and challenges at the external borders;
 - (d) monitor the management of the external borders through liaison officers of the Agency in Member States;
 - (e) *monitor compliance with fundamental rights in all of its activities at the external borders and in return operations;*

- (f) support the development and operation of EUROSUR;
- (g) assist Member States in circumstances requiring increased technical and operational assistance at the external borders by coordinating and organising joint operations, taking into account that some situations may involve humanitarian emergencies and rescue at sea in accordance with Union and international law;
- (h) assist Member States in circumstances requiring increased technical and operational assistance at the external borders by launching rapid border interventions at the external borders of those Member States facing specific and disproportionate challenges, taking into account that some situations may involve humanitarian emergencies and rescue at sea in accordance with Union and international law;

- (i) provide technical and operational assistance to Member States and third countries in accordance with Regulation (EU) No 656/2014 and international law, in support of search and rescue operations for persons in distress at sea which may arise during border surveillance operations at sea;
- (j) deploy the standing corps in the framework of border management teams, migration management support teams and return teams (collectively referred to as ‘teams’) during joint operations, as well as in rapid border interventions, return operations and return interventions;
- (k) set up a technical equipment pool, including a rapid reaction equipment pool, to be deployed in joint operations, in rapid border interventions and in the framework of migration management support teams, as well as in return operations and return interventions;

- (l) develop and manage, ***with the support of an internal quality control mechanism***, its own human and technical capabilities to contribute to the standing corps, including to the recruitment and training of the members of its staff acting as members of the teams, and the technical equipment pool,;
- (m) within the framework of the migration management support teams at hotspot areas:
 - (i) deploy operational staff and technical equipment to provide assistance in screening, debriefing, identification and fingerprinting;
 - (ii) establish a procedure for referring and providing initial information to persons who are in need of international protection or wish to apply for such protection, ***including a procedure for the identification of vulnerable groups***, in cooperation with EASO and competent national authorities;

(n) provide assistance at all stages of the return process *without entering into the merits of return decisions, which remain the sole responsibility of the Member States*, assist with the coordination and organisation of return operations *and provide technical and operational support to implement the obligation to return returnees and technical and operational support to return operations and interventions, including in circumstances requiring increased assistance*;

■

- (o) set up a pool of forced-return monitors;
- (p) deploy return teams during return interventions;

(q) within the respective mandates of the agencies concerned, cooperate with Europol and Eurojust and provide support to Member States in circumstances requiring increased technical and operational assistance at the external borders in the fight against ■ cross-border crime and terrorism;

(r) cooperate with *EASO within their respective mandates*, in particular to facilitate measures in cases where third-country nationals whose applications for international protection have been rejected by means of a final decision are subject to return;

(s) *cooperate with the FRA, within their respective mandates, in order to ensure the continuous and uniform application of the Union acquis on fundamental rights;*

(t) cooperate with the European Fisheries Control Agency (EFCA) and the European Maritime Safety Agency (*EMSA*), *within their respective mandates, in order to support national authorities carrying out coast guard functions, as set out in Article 69, including the saving of lives at sea, by providing services, information, equipment and training, as well as by coordinating multipurpose operations;*

(u) *cooperate with* third countries in relation to the areas covered by this Regulation, including through the possible operational deployment of border management teams ■ in third countries;

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(v) assist Member States and third countries in the context of technical and operational cooperation between them in the matters covered by this Regulation;

(w) assist Member States and third countries in the training of national border guards, other relevant staff and experts on return, including *through* the establishment of common training standards *and programmes, including on fundamental rights*;

(x) participate in the development and management of research and innovation activities relevant for the control ■ of the external borders, including the use of advanced surveillance technology, and develop *its own* pilot projects, *where necessary, for the carrying out of activities as provided for in* this Regulation;

(y) *develop technical standards for information exchange*;

(z) support the development of technical standards for equipment in the area of border control and return, including for the interconnection of systems and networks, ***and support, as appropriate, the development of common minimum standards for external border surveillance, in line with the respective competences of the Member States and of the Commission;***

(aa) establish and maintain the communication network referred to in Article 14;

(ab) develop and operate, in accordance with Regulation (EU) 2018/1725, information systems that enable swift and reliable exchanges of information regarding emerging risks in the management of the external borders, illegal immigration and return, in close cooperation with the Commission, Union bodies, offices and agencies as well as the European Migration Network established by Council Decision 2008/381/EC³⁶;

³⁶ Council Decision 2008/381/EC of 14 May 2008 establishing a European Migration Network (OJ L 131, 21.5.2008, p. 7).

(ac) provide the necessary assistance for the development of a common information-sharing environment, including interoperability of systems, as appropriate;

(ad) follow high standards for border management allowing for transparency and public scrutiny in full respect of the applicable law and ensuring respect for, and protection and promotion of, fundamental rights;

(ae) manage and operate the False and Authentic Documents Online system referred to in Article 79 *and support the Member States by facilitating the detection of document fraud;*

- (af) fulfil the tasks and obligations entrusted to the Agency under **Regulation (EU) 2018/1240 of the European Parliament and of the Council**³⁷ and ensure the setting up and operation of the ETIAS Central Unit in accordance with Article 7 of **that Regulation**;
- (ag) **assist Member States in facilitating persons to cross the external borders.**

³⁷ **Regulation (EU) 2018/1240 of the European Parliament and of the Council of 12 September 2018 establishing a European Travel Information and Authorisation System (ETIAS) and amending Regulations (EU) No 1077/2011, (EU) No 515/2014, (EU) 2016/399, (EU) 2016/1624 and (EU) 2017/2226 (OJ L 236, 19.9.2018, p. 1).**

2. The Agency shall communicate ■ on matters falling within its mandate. It shall provide the public with accurate, *detailed, timely* and comprehensive information about its activities.

Such communication shall not be detrimental to the tasks referred to in paragraph 1 of this Article, and in particular shall not reveal operational information which, if made public, would jeopardise attainment of the objective of operations. The Agency shall communicate without prejudice to Article 92 and in accordance with relevant communication and dissemination plans adopted by the management board and in close cooperation, where appropriate, with other bodies, offices and agencies.

SECTION 2

INFORMATION EXCHANGE AND COOPERATION

Article 11

Duty to cooperate in good faith

The Agency, the national authorities responsible for border management , including coast guards to the extent that they carry out border control tasks, ***and the national authorities responsible for returns*** shall be subject to a duty to cooperate in good faith and an obligation to exchange information.

Article 12

Obligation to exchange information

1. In order to perform the tasks conferred on them by this Regulation, the Agency, the national authorities responsible for border management, including coast guards to the extent that they carry out border control tasks, and the national authorities responsible for returns, shall, in accordance with this Regulation and other relevant Union and national law regarding the exchange of information, share in a timely and accurate manner all necessary information.

2. The Agency shall take appropriate measures to facilitate the exchange of information relevant to its tasks with the Commission and the Member States .

Where information is relevant to the performance of its tasks, the Agency shall exchange that information *with other relevant Union bodies, offices and agencies* for the purpose of risk analysis, collecting statistical data, assessing the situation in third countries, training and the support to Member States in connection with contingency planning. For *that* purpose, *the* necessary tools and structures shall be developed between the Union bodies, offices and agencies.

3. The Agency shall take all necessary measures to facilitate the exchange of information relevant for its tasks with Ireland and the United Kingdom where that information relates to the activities in which they participate in accordance with Article 70 and Article 100(5).

Article 13

National contact points

1. Each Member State shall appoint a national contact point for communication with the Agency on all matters pertaining to the activities of the Agency, ***without prejudice to the role of the national coordination centres***. The national contact points shall be reachable at all times and shall ensure the timely dissemination of all information from the Agency to all the relevant authorities within the Member State concerned, in particular the members of the management board and the national coordination centre.

2. ***Member States may designate up to two staff members representing their national contact point to be assigned to the Agency as liaison officers. The liaison officers shall facilitate communication between the national contact point and the Agency and may, where necessary, attend relevant meetings.***

3. The Agency shall provide liaison officers with the necessary premises within its headquarters and with adequate support for the performance of their duties. All other costs that arise in connection with the deployment of liaison officers shall be covered by the Member State. The management board shall specify the rules and conditions of the deployment, as well as the rules concerning adequate support to be provided.

Article 14

Communication network

1. The Agency shall establish and maintain a communication network in order to provide communication and analytical tools and allow for the exchange of sensitive non-classified and classified information in a secure manner and in near real time with, and among, the national coordination centres.

Any system or application using the communication network shall comply with Union law on data protection throughout its life cycle.

The communication network shall be operational twenty-four hours a day and seven days a week and shall allow for:

- (a) bilateral and multilateral information exchange in near real time;
- (b) audio and video conferencing;
- (c) secure handling, storing, transmission and processing of sensitive non-classified information;

(d) secure handling, storing, transmission and processing of EU classified information up to the level of CONFIDENTIEL UE/EU *CONFIDENTIAL* or equivalent national classification levels, ensuring that classified information is handled, stored, transmitted and processed in a separate and duly accredited part of the communication network.

2. The Agency shall provide technical support and ensure that the communication network is permanently available and can support the communication and information system managed by the Agency.

Article 15

Information exchange systems and applications managed by the Agency

1. The Agency may take all necessary measures to facilitate the exchange of information relevant to its tasks with *the European Parliament*, the Council, the Commission, the Member States and, where appropriate, *other Union institutions, and the Union bodies, offices and agencies and international organisations listed in Article 68(1)* and third countries as referred to in Article 71.

2. The Agency shall develop, deploy and operate an information system capable of exchanging classified and sensitive non-classified information with the actors referred to in paragraph 1 of this Article, and of exchanging personal data referred to in Articles 86 to 91 in accordance with Article 92.

3. The Agency shall deploy the information systems referred to in paragraph 2 of this Article on the communication network referred to in Article 14 as appropriate.

Article 16

Technical standards for information exchange

The Agency shall develop technical standards *in cooperation with the Member States in order to*:

- (a) interconnect the communication network referred to in Article 14 with national networks used for establishing the national situational pictures referred to in Article 25 and other relevant information systems for the purpose of this Regulation;
- (b) develop, and establish interfaces between, relevant information exchange systems and software applications of the Agency and of the Member States for the purpose of this Regulation;

- (c) broadcast situational pictures and, as appropriate, specific situational pictures as referred to in Article 27 and ensure communication between relevant units and centres of *competent* national authorities and with the teams deployed by the Agency by using various means of communication such as satellite communications and radio networks;
- (d) report the position of own assets, making the best possible use of the technological development of the satellite navigation system established under the Galileo programme in accordance with Regulation (EU) No 1285/2013 of the European Parliament and of the Council³⁸ .

³⁸ Regulation (EU) No 1285/2013 of the European Parliament and of the Council of 11 December 2013 on the implementation and exploitation of European satellite navigation systems and repealing Council Regulation (EC) No 876/2002 and Regulation (EC) No 683/2008 of the European Parliament and of the Council (*OJ L 347, 20.12.2013, p. 1*).

Article 17

Information assurance

Member States shall ensure via their national coordination centre ***and under the supervision of the competent national authorities*** that their national authorities, agencies and other bodies, ***when*** using the communication network referred to in Article 14 and the information exchange systems of the Agency:

- (a) have proper ***and continuous*** access to the relevant systems and networks ***of the Agency or to systems and networks connected to them***;
- (b) ***comply with the relevant*** technical standards referred to in Article 16;
- (c) apply equivalent security rules and standards as those applied by the Agency for the handling of classified information;
- (d) exchange, process and store sensitive non-classified and classified information in compliance with Article 92.

SECTION 3
EUROSUR
Article 18
EUROSUR

This Regulation establishes EUROSUR as an integrated framework for the exchange of information and for *operational* cooperation within the European Border and Coast Guard in order to improve situational awareness and to increase reaction capability for *the purposes of* border management, *including the detection, prevention* and combating *of* illegal immigration and cross-border crime and contributing to ensuring the protection and saving the lives of migrants.

Article 19

Scope of EUROSUR

1. EUROSUR shall be used for border checks at authorised border crossing points and for external land, sea and air border surveillance, including the monitoring, detection, identification, tracking, prevention and interception of unauthorised border crossings for the purpose of detecting, preventing and combating illegal immigration and cross-border crime and contributing to ensuring the protection and saving the lives of migrants.
2. EUROSUR shall not be used for any legal or administrative measure taken once the competent authorities of a Member State have intercepted cross-border criminal activities or unauthorised crossings by persons of the external borders.

Article 20

EUROSUR components

1. , Member States and the Agency shall use EUROSUR for the exchange of information and for the cooperation in the field of border control, ***taking into account existing information exchange and cooperation mechanisms. EUROSUR shall*** consist of the following components:

- (a) national coordination centres as referred to in Article 21;
- (b) national situational pictures as referred to in Article 25;
- (c) a European situational picture as referred to in Article 26, including information on external border sections with corresponding impact levels;
- (d) specific situational pictures as referred to in Article 27;

- (e) EUROSUR fusion services as referred to in Article 28;
- (f) integrated planning as referred to in Article 9 **■** .

2. The national coordination centres shall provide the Agency, via the communication network referred to in Article 14 and relevant systems, with information from their national situational pictures and, as appropriate, from specific situational pictures, which is required for the establishment and maintenance of the European situational picture.

3. The Agency shall give the national coordination centres, via the communication network, unlimited access twenty-four hours a day, seven days a week, to specific situational pictures and to the European situational picture.

Article 21

National coordination centres

1. Each Member State shall designate, operate and maintain a national coordination centre which shall coordinate, and exchange information among, all authorities having responsibility for external border control at national level, as well as with the other national coordination centres and the Agency. Each Member State shall notify the establishment of its national coordination centre to the Commission, which shall forthwith inform the other Member States and the Agency thereof.
2. Without prejudice to Article 13 and within the framework of EUROSUR, the national coordination centre shall be the single point of contact for the exchange of information and for the cooperation with other national coordination centres and with the Agency.

3. The national coordination centres shall:
- (a) ensure the timely exchange of information and timely cooperation between all national authorities having responsibility for external border control at national level, as well as with other national coordination centres and the Agency;
 - (b) ensure the timely exchange of information with search and rescue, law enforcement, asylum and immigration authorities and manage the dissemination of relevant information at national level;
 - (c) contribute to an effective and efficient management of resources and personnel;
 - (d) establish and maintain the national situational pictures in accordance with Article 25;

- (e) support *the coordination*, planning and implementation of national border control;
- (f) coordinate the national border control systems, in accordance with national law;
- (g) contribute to regularly measuring the effects of national border control for the purposes of this Regulation;
- (h) coordinate operational measures with other Member States and third countries, without prejudice to the competences of the Agency and of the other Member States;
- (i) exchange relevant information with the immigration liaison officers of their Member State, *where designated, through appropriate structures established at national level*, with a view to contributing to the European situational picture and supporting border control operations;

(j) *under the supervision of the competent national authorities, contribute to the information assurance of* national information systems and the Agency's information systems.

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4. Member States may charge regional, local, functional or other authorities which are in a position to take operational decisions with ensuring situational awareness and reaction capability in their respective areas of competence, including the tasks and competences listed in points (c), (e) and (f) of paragraph 3.

5. The decision of a Member State to allocate tasks in accordance with paragraph 4 shall not affect the national coordination centre in its ability to cooperate and exchange information with other national coordination centres and the Agency.

6. In pre-defined cases, as determined at national level, a national coordination centre may authorise an authority referred to in paragraph 4 to communicate and exchange information with the regional authorities or the national coordination centre of another Member State or the competent authorities of a third country on condition that such authorised authority regularly informs its own national coordination centre of such communication and exchange of information.

7. *The national coordination centre shall operate twenty-four hours a day, seven days a week.*

Article 22

EUROSUR Handbook

1. The Commission shall, in close cooperation with the Agency and any other relevant Union body, office or agency, adopt and make available a practical handbook for the implementation and management of EUROSUR (the 'EUROSUR Handbook'). The EUROSUR Handbook shall provide technical and operational guidelines, recommendations and best practices, including in relation to cooperation with third countries. The Commission shall adopt the EUROSUR Handbook in the form of a recommendation.
2. The Commission may decide, after consultation with Member States and the Agency, to classify parts of the EUROSUR Handbook as RESTREINT UE/EU RESTRICTED in compliance with the rules laid down in the Rules of Procedure of the Commission.

Article 23

Monitoring of EUROSUR

1. The Agency and the Member States shall ensure that procedures are in place to monitor the technical and operational functioning of EUROSUR against the objectives of achieving an adequate situational awareness and reaction capability at the external borders.
2. The Agency shall *continuously* monitor the quality of the service offered by the communication network referred to in Article 14 and the quality of the data shared in the European situational picture.
3. The Agency shall transmit information collected as part of the monitoring under paragraph 2 to the *national coordination centres and* the relevant *command and control structures used for the Agency's operations* as part of the EUROSUR fusion services. Such information shall be classified RESTREINT UE/EU RESTRICTED.

SECTION 4
SITUATIONAL AWARENESS

Article 24

Situational pictures

1. The national situational pictures, the European situational picture and the specific situational pictures shall be produced through the collection, evaluation, collation, analysis, interpretation, generation, visualisation and dissemination of information.

The situational pictures referred to in the first subparagraph shall consist of the following *information* layers:

(a) an events layer that includes **■** events *and incidents* related to unauthorised border crossings *and* cross-border crime *and, where available, information on* unauthorised secondary movements, *for the purpose of understanding migratory trends, volume and routes*;

(b) an operational layer that contains information on operations, including the deployment plan, area of operations, ■ and the position, time, status and type of assets participating as provided for in the operational plan;

(c) an analysis layer that contains analysed information which is relevant for the purposes of this Regulation and, in particular, is relevant to the attribution of impact levels to the external border sections, such as imagery and geo-data, key developments and indicators, analytical reports, and other relevant supporting information.

2. The situational pictures referred to in paragraph 1 shall allow for the identification and tracing of events, operations and corresponding analysis relating to situations where human lives are at risk.

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3. The Commission shall adopt an implementing act laying down the details of the information layers of the situational pictures and the rules for the establishment of specific situational pictures.. The implementing act shall specify the type of information to be provided, the entities responsible for collecting, processing, archiving and transmitting specific information, the maximum time limits for reporting, the data security and data protection rules and related quality control mechanisms. That implementing act shall be adopted in accordance with the examination procedure referred to in Article 122(2).

Article 25

National situational pictures

1. Each national coordination centre shall establish and maintain a national situational picture in order to provide all authorities having responsibility for external border control at national level with effective, accurate and timely information.
2. The national situational picture shall be composed of information collected from the following sources:
 - (a) the national border surveillance system in accordance with national law;
 - (b) stationary and mobile sensors operated by national authorities having responsibility for external border surveillance;
 - (c) patrols on border surveillance and other monitoring missions;

- (d) local, regional and other coordination centres;
- (e) other relevant national authorities and systems, including immigration liaison officers, operational centres and contact points;
- (f) border checks;
- (g) the Agency;
- (h) national coordination centres in other Member States;
- (i) authorities of third countries, on the basis of bilateral or multilateral agreements and regional networks referred to in Article 72;

- (j) ship reporting systems in accordance with their respective legal bases;
- (k) other relevant European and international organisations(1) other sources.

3. Each national coordination centre shall attribute a single indicative impact level, ranging from 'low' and 'medium' to 'high' and '**very high**', to each incident in the events layer of the national situational picture. All incidents shall be shared with the Agency.

4. Each national coordination centre may decide, at the request of the competent national authorities, to restrict access to information related to ***national security, including*** military assets, on a need-to-know basis.

5. The national coordination centres of neighbouring Member States *may* share with each other, directly and in near real time, the situational picture of neighbouring external border sections, including the positions, status and type of own assets operating in the neighbouring external border sections.

Article 26

European situational picture

1. The Agency shall establish and maintain a European situational picture in order to provide the national coordination centres and the Commission with effective, accurate and timely information and analysis, covering the external borders, the pre-frontier area and unauthorised secondary movements.

2. The European situational picture shall be composed of information collected from the following sources:

- (a) national coordination centres, and national situational pictures and information and reports received from immigration liaison officers to the extent required by this Article;
- (b) the Agency, including the information and reports provided by its liaison officers in accordance with Articles 31 and 77;
- (c) Union delegations and Common Security and Defence Policy (CSDP) missions and operations *as provided for in point (j) of the second subparagraph of Article 68(1)*;

(d) other relevant Union bodies, offices and agencies and international organisations listed in Article 68(1);

(e) authorities of third countries, on the basis of bilateral or multilateral agreements and regional networks as referred to in Article 72, and working arrangements as referred to in Article 73(4);(f) other sources.

3. The events layer of the European situational picture shall include information relating to:

(a) incidents and other events contained in the events layer of the national situational pictures;

(b) incidents and other events contained in the *specific situational pictures as provided for in Article 27*;

(c) incidents in the operational area of a joint operation or rapid intervention coordinated by the Agency, or in a hotspot ■ .

4. The operational layer of the European situational picture shall contain information on the joint operations and rapid interventions coordinated by the Agency and on hotspots **■**, and shall include the mission statements, locations, status, duration, information on the Member States and other actors involved, daily and weekly situational reports, statistical data and information packages for the media.

5. Information on own assets in the operational layer of the European situational picture may, where appropriate, be classified as RESTREINT UE/EU RESTRICTED.

6. In the European situational picture, the Agency shall take into account the impact levels that were assigned to specific incidents in national situational pictures by the national coordination centres. *For* any incident in the pre-frontier area, the Agency shall assign a single indicative impact level and shall inform the national coordination centres thereof.

Article 27

Specific situational pictures

1. The Agency and the Member States may establish and maintain specific situational pictures in order to support specific operational activities at the external borders or to share information with ***Union institutions, bodies, offices and agencies and international organisations listed*** in Article 68(1) or third countries as provided for in Article 75 ■ .
2. The specific situational pictures shall be composed of a subset of information of the national and European situational pictures.
3. The detailed rules for establishing and sharing the specific situational pictures shall be set out in an operational plan for the operational activities concerned and in a bilateral or multilateral agreement where a specific situational picture is established in the framework of bilateral or multilateral cooperation with third countries. ***Any sharing of information under this paragraph shall be carried out in accordance with the principle of originator's consent.***

Article 28

EUROSUR fusion services

1. The Agency shall coordinate the EUROSUR Fusion Services in order to supply the national coordination centres, the Commission and itself with information on the external borders and on the pre-frontier area on a regular, reliable and cost-efficient basis.
2. The Agency shall provide a national coordination centre, at its request, with information on the external borders of the Member State to which it belongs and on the pre-frontier area which may be derived from:
 - (a) the selective monitoring of designated third-country ports and coasts which have been identified through risk analysis and information as being embarkation or transit points for vessels or other craft used for illegal immigration or cross-border crime;
 - (b) the tracking of vessels or other craft over high seas and the tracking of aircraft, where those vessels, other craft or aircraft are suspected of, or have been identified as, being used for illegal immigration or cross-border crime, ***including in the case of persons in distress at sea, with a view to transmitting that information to the relevant authorities that are competent for search and rescue operations;***

(c) monitoring of designated areas in the maritime domain in order to detect, identify and track vessels and other craft being used for, or suspected of being used for, illegal immigration or cross-border crime, *including in the case of persons in distress at sea with a view to transmitting that information to the relevant authorities that are competent for search and rescue operations;*

(d) monitoring of designated areas of air borders in order to detect, identify and track aircraft and other forms of equipment being used for, or suspected of being used for, illegal immigration or cross-border crime;

(e) environmental assessment of designated areas in the maritime domain and at the external land and air borders in order to optimise monitoring and patrolling activities;

(f) selective monitoring of designated pre-frontier areas at the external borders which have been identified through risk analysis and information as being potential departure or transit areas for illegal immigration or cross-border crime;

(g) monitoring migratory flows towards and within the Union in terms of ***trends, volume and routes***;

(h) media monitoring, open source intelligence and analysis of internet activities in line with Directive (EU) 2016/680 ***or Regulation (EU) 2016/679, as applicable***, for the purpose of preventing illegal immigration or cross-border crime;

(i) analysis of ***information derived from*** large-scale information systems for the purpose of detecting changing routes and methods used for illegal immigration and cross-border crime.

3. The Agency may refuse a request from a national coordination centre for technical, financial or operational reasons. The Agency shall notify the national coordination centre in due time of the reasons for such a refusal.

4. The Agency may use, on its own initiative, the surveillance tools referred to in paragraph 2 for collecting information on the pre-frontier area, which is relevant for the European situational picture.

SECTION 5
RISK ANALYSIS

Article 29

Risk analysis

1. The Agency shall monitor migratory flows towards *the Union*, and within the Union *in terms of migratory trends, volume and routes, and other* trends or possible challenges at the external borders and with regard to return. For that purpose, the Agency shall, by a decision of the management board based on a proposal from the executive director, establish a common integrated risk analysis model, which shall be applied by the Agency and the Member States. The common integrated risk analysis model shall be *established and* updated, *where needed*, on the basis of the outcome of the evaluation of the implementation of the multiannual strategic policy cycle for European integrated border management referred to in Article 8(7). ■

2. The Agency shall prepare general annual risk analyses, which shall be submitted to the European Parliament, to the Council and to the Commission applying the security rules adopted in accordance with Article 92, and tailored risk analyses for operational activities. Every two years, the Agency, *in close consultation with the Member States*, shall prepare and submit to the European Parliament, to the Council and to the Commission a strategic risk analysis for European integrated border management. Such strategic risk analyses shall be taken into account for the preparation of the multiannual strategic policy cycle for European integrated border management. The Agency shall prepare such general annual risk analyses and strategic risk analyses *on the basis of information received, including from the Member States. Personal data shall be anonymised in the results of such risk analyses.*

3. The risk analyses referred to in paragraph 2 shall cover all aspects relevant to European integrated border management with a view to developing a pre-warning mechanism.

4. *The Agency shall publish comprehensive information on the common integrated risk analysis model.*

5. Member States shall provide the Agency with all necessary information regarding the situation, trends and possible threats at the external borders and in the field of return. Member States shall regularly, or upon the request of the Agency, provide it with all relevant information such as statistical and operational data collected in relation to ***European integrated border management that is included in the list of mandatory information and data to be exchanged with the Agency as referred to in point (e) of Article 100(2)***, as well as information from the analysis layers of the national situational pictures as provided for in Article 25.

6. The results of the risk analysis shall be submitted **█** to the management board ***and shared with the competent authorities of the Member States in a timely and accurate manner.***

7. Member States shall take results of the risk analysis into account when planning their operations and activities at the external borders and their activities with regard to return.

8. The Agency shall incorporate the results of a common integrated risk analysis model in its development of common core curricula for training as referred to in Article 62 **█** .

SECTION 6

PREVENTION AND RESPONSIVENESS

Article 30

Determination of external border sections

For the purposes of this Regulation, each Member State shall divide its external borders into external border sections. Those sections shall consist of land, sea and, where a Member State so decides, air border sections. Each Member State shall notify such external border sections to the Agency.

Member States shall notify any change of external border sections *to* the Agency *in a timely manner* to ensure the continuity of risk analysis by the Agency.

Article 31

Agency liaison officers in Member States

1. The Agency shall ensure the regular monitoring of all Member States' management of the external borders and return through liaison officers of the Agency.

The Agency may decide that a liaison officer covers up to four Member States which are geographically close to each other.

2. The executive director shall appoint experts from the statutory staff to be deployed as liaison officers. The executive director shall, on the basis of risk analysis and in consultation with the Member States concerned, make a proposal on the nature and terms of the deployment, the Member State or region to which a liaison officer may be deployed and possible tasks not covered by paragraph 3. The proposal from the executive director shall be subject to approval by the management board. The executive director shall notify the Member State concerned of the appointment and shall determine, together with that Member State, the location of deployment.

3. The liaison officers shall act on behalf of the Agency, and their role shall be to foster cooperation and dialogue between the Agency and the national authorities responsible for border management, including coast guards to the extent that they carry out border control tasks as well as the national authorities responsible for returns. The liaison officers shall, in particular:

(a) act as an interface between the Agency and the national authorities responsible for border management, including coast guards to the extent that they carry out border control tasks, as well as the national authorities responsible for returns;

(b) support the collection of information required by the Agency for the monitoring of illegal immigration and risk analyses referred to in Article 29;

(c) support the collection of information referred to in Article 32 and required by the Agency to carry out vulnerability assessments *and prepare a report for that purpose*;

- (d) monitor the measures taken by the Member State at external border sections to which a high or critical impact level has been attributed in accordance with Article 34;
- (e) contribute to promoting the application of the Union *acquis* relating to the management of the external borders and return, including with regard to respect for fundamental rights;
- (f) cooperate with the fundamental rights officer, where necessary, with a view to promoting respect for fundamental rights in the work of the Agency in line with point (e);***
- (g) where possible, assist the Member States in preparing their contingency plans concerning border management;

- (h) facilitate the communication between the Member State concerned and the Agency, share relevant information from the Agency with the Member State concerned, including information about ongoing operations;
- (i) report regularly *and directly* to the executive director on the situation at the external borders and the capacity of the Member State concerned to deal effectively with the situation at the external borders; report also on the execution of return operations towards relevant third countries;
- (j) monitor the measures taken by the Member State with regard to a situation requiring urgent action at the external borders as referred to in Article 42;
- (k) monitor the measures taken by the Member State with regard to return and support the collection of information required by the Agency to carry out the activities referred to in Article 48.

4. If the *reporting by the* liaison officer ■ referred to in point (i) of paragraph 3 *raises* concerns about one or more aspects relevant for the Member State concerned, the executive director shall inform that Member State without delay .

5. For the purposes of paragraph 3, the liaison officer shall, in compliance with the national and Union security and data protection rules:

(a) receive information from the national coordination centre concerned and the relevant national situational picture established in accordance with Article 25;

(b) keep regular contacts with national authorities which are responsible for border management, including coast guards to the extent that they carry out border control tasks, as well as the national authorities responsible for returns, whilst informing *the national contact point concerned*.

6. The report of the liaison officer referred to in point (c) of paragraph 3 of this Article shall form part of the vulnerability assessment referred to in Article 32. The report shall be transmitted to the Member State concerned.

7. In carrying out their duties, the liaison officers shall take instructions only from the Agency.

Article 32

Vulnerability assessment

1. The Agency shall establish a common vulnerability assessment methodology by decision of the management board, on the basis of a proposal from the executive director *prepared in close cooperation with the Member States and the Commission*. That methodology shall include objective criteria against which the Agency shall carry out the vulnerability assessment, the frequency of such assessments, how consecutive vulnerability assessments are to be carried out, and arrangements for an effective system for monitoring the implementation of recommendations of the executive director as referred to in paragraph 7.

2. The Agency shall monitor and assess the availability of the technical equipment, systems, capabilities, resources, infrastructure and adequately skilled and trained staff of Member States necessary for border control as referred to in point (a) of Article 3(1). In that context, the Agency shall assess the national capability development plans referred to in Article 9(4) as regards ***the capacity to perform border control taking into account the fact that some national capabilities may be partially used for purposes other than border control.*** For future planning, the Agency shall carry out such monitoring and assessment as a preventive measure on the basis of the risk analyses prepared in accordance with Article 29(2). The Agency shall carry out such monitoring and assessment at least once a year, unless the executive director, on the basis of risk analysis or a previous vulnerability assessment, decides otherwise. ***In any event, each Member State shall be subject to monitoring and assessment at least once every three years.***

3. Without prejudice to **Article 9**, Member States shall, at the request of the Agency, provide information as regards technical equipment, staff and, to the extent possible, the financial resources available at national level to carry out border control. Member States shall also provide information on their contingency plans on border management at the Agency's request.

4. The aim of the vulnerability assessment is for the Agency: to assess the capacity and readiness of Member States to face **present and** upcoming challenges at the external borders; to identify, especially for those Member States facing specific and disproportionate challenges, possible immediate consequences at the external borders and subsequent consequences on the functioning of the Schengen area; to assess their capacity to contribute to the standing corps and to the technical equipment pool, including the rapid reaction equipment pool; **and to assess the hosting capacity of Member States with regard to support from the European Border and Coast Guard in line with Article 9(3)**. That assessment shall be without prejudice to the Schengen evaluation mechanism.

5. In the vulnerability assessment, the Agency shall *assess, in qualitative and quantitative terms, the* Member States' capacity to carry out all border management tasks, including their capacity to deal with the potential arrival of large numbers of persons on their territory.
6. The *preliminary* results of the vulnerability assessment shall be submitted to the Member States concerned. The Member States concerned may comment on that assessment.
7. Where necessary, the executive director, in consultation with the Member State concerned, shall make a recommendation setting out the necessary measures to be taken by the Member State concerned and the time limit within which such measures are to be implemented. The executive director shall invite the Member States concerned to take the necessary measures on the basis of an action plan developed by the Member State in consultation with the executive director.

8. The executive director shall base the measures to be recommended to the Member States concerned on the results of the vulnerability assessment, taking into account the Agency's risk analysis, the comments of the Member State concerned and the results of the Schengen evaluation mechanism.

The recommended measures ■ shall be aimed at eliminating the vulnerabilities identified in the assessment in order for Member States to increase their readiness to face *present and* upcoming challenges *at the external borders* by enhancing or improving their capabilities, technical equipment, systems, resources and contingency plans. *The executive director may offer the technical expertise of the Agency to the Member States to support the implementation of the recommended measures .*

9. The executive director shall monitor the implementation of the recommended measures by means of regular reports to be submitted by the Member States on the basis of the action plans referred to in paragraph 7.

Where there is a risk that a Member State will not implement a recommended measure within the time limit set in accordance with paragraph 7, the executive director shall immediately inform the member of the management board from the Member State concerned and the Commission. *In consultation with the member of the management board from the Member State concerned, the executive director shall* enquire of the relevant authorities of that Member State about the reasons for the delay and offer support by the Agency to facilitate the implementation of the measure recommended.

10. Where a Member State does not implement the necessary measures of the recommendation within the time limit set in accordance with paragraph 7 of this Article, the executive director shall refer the matter to the management board and notify the Commission. The management board shall adopt a decision on the basis of a proposal from the executive director, setting out the necessary measures to be taken by the Member State concerned and the time limit within which such measures are to be implemented. The decision of the management board shall be binding on the Member State. If the Member State does not implement the measures within the time limit provided for in that decision, the management board shall notify the Council and the Commission and further action may be taken in accordance with Article 42.

11. The vulnerability assessment, *including a detailed description of the outcome of the vulnerability assessment, the measures taken by the Member States in response to the vulnerability assessment and the status of the implementation of any measures previously recommended*, shall be transmitted, in accordance with Article 92, on a regular basis and at least once a year to the European Parliament, to the Council and to the Commission.

Article 33

Synergies between the vulnerability assessment and the Schengen evaluation mechanism

1. The synergies between the vulnerability assessment and the Schengen evaluation mechanism shall be maximised in order to establish an improved situational picture on the functioning of the Schengen area, avoiding, to the extent possible, the duplication of efforts on the Member States' side, and ensuring a better coordinated use of the relevant Union financial instruments supporting the management of the external borders.
2. For the purpose referred to in paragraph 1, the Commission and the Agency shall establish the necessary arrangements to share with each other in a regular, secured and timely manner all information related to the results of vulnerability assessments and the results of the evaluations carried out within the framework of the Schengen evaluation mechanism in the area of border management. Those information-sharing arrangements shall cover the reports of vulnerability assessments and reports of Schengen evaluation visits, subsequent recommendations, action plans and any updates on the implementation of the action plans provided by the Member States.

3. For the purposes of the Schengen evaluation mechanism as it relates to external border management, the Commission shall share the results of the vulnerability assessments with all the members of the Schengen evaluation teams involved in the evaluation of the Member State concerned. Such information shall be considered sensitive within the meaning of Regulation (EU) No 1053/2013 and shall be treated accordingly.

4. The arrangements referred to in paragraph 2 shall cover results of the evaluations carried out within the framework of the Schengen evaluation mechanism in the area of return to ensure the full awareness of the Agency of the identified deficiencies in view of enabling it to propose appropriate measures to support Member States concerned in that regard.

Article 34

Attribution of impact levels to external border sections

1. On the basis of the Agency's risk analysis and vulnerability assessment and in agreement with the Member State concerned, the Agency shall attribute the following impact levels to each external border section or change such levels:

- (a) low impact level where the incidents related to ■ **illegal *immigration*** or cross-border crime occurring at the relevant border section have an insignificant impact on border security;
- (b) medium impact level where the incidents related to ■ **illegal *immigration*** or cross-border crime occurring at the relevant border section have a moderate impact on border security;

(c) high impact level where the incidents related to illegal immigration or cross-border crime occurring at the relevant border section have a significant impact on border security.

2. *In order to swiftly address a crisis situation at a particular external border section, where the Agency's risk analysis shows that incidents related to illegal immigration or cross-border crime occurring at the relevant external border section have a decisive impact on border security to such an extent that they risk jeopardising the functioning of the Schengen area, the Agency shall, in agreement with the Member State concerned, temporarily attribute a "critical" impact level to that external border section.*

3. *Where there is no agreement between the Member State concerned and the Agency on the attribution of an impact level to an external border section, the impact level that was previously attributed to that border section shall remain unchanged.*

4. ■ The national coordination centre shall constantly assess *in close cooperation with other competent national authorities* whether there is a need to change the impact level of any of the external border sections by taking into account the information contained in the national situational picture and inform the Agency accordingly.

5. The Agency shall indicate the impact levels attributed to the external border sections in the European situational picture.

Article 35

Reaction corresponding to impact levels

1. The Member States shall ensure that border control at the external border sections corresponds to the attributed impact levels in the following manner:
 - (a) where a low impact level is attributed to an external border section, the national authorities responsible for external border control shall organise regular border control on the basis of risk analysis and ensure that sufficient personnel and resources are being kept *available for that border section*;
 - (b) where a medium impact level is attributed to an external border section, the national authorities responsible for external border control shall, in addition to the measures taken under point (a) of this paragraph, ensure that appropriate border control measures are being taken at that border section; where such border control measures are taken, the national coordination centre shall be notified accordingly; the national coordination centre shall coordinate any support given in accordance with Article 21(3);

(c) where a high impact level is attributed to an external border section, the Member State concerned, in addition to the measures taken under point (b) of this paragraph, shall ensure, through the national coordination centre, that the national authorities operating at that border section are given the necessary support and that reinforced border control measures are taken; that Member State may request support from the Agency subject to the conditions for initiating joint operations or rapid border interventions as laid down in Article 36;

(d) where a critical impact level is attributed to an external border section, the Agency shall notify the Commission thereof; *the executive director*, in addition to the measures taken under point (c) of this paragraph, shall *issue a* recommendation ■ in accordance with Article 41(1), *taking into account the ongoing support by the Agency; the Member State concerned shall respond to the recommendation in accordance with Article 41(2).*

2. The national coordination centres shall regularly inform the Agency of the measures taken at national level pursuant to **■** points (c) and (d) of paragraph 1.
3. Where a medium, high or critical impact level is attributed to an external border section which is adjacent to the border section of another Member State or of a third country with which agreements, arrangements or regional networks, as referred to in Articles 72 and 73, are in place, the national coordination centre shall contact the national coordination centre of the neighbouring Member State or the competent authority of the neighbouring *third* country and shall endeavour to coordinate together with the Agency the necessary cross-border measures.
4. The Agency shall, together with the Member State concerned, evaluate the attribution of impact levels and the corresponding measures taken at national and Union level. That evaluation shall contribute to the vulnerability assessment to be carried out by the Agency in accordance with Article 32.

SECTION 7

ACTION BY THE AGENCY AT THE EXTERNAL BORDERS

Article 36

Actions by the Agency at the external borders

1. A Member State may request the Agency's assistance in implementing its obligations with regard to external border control. The Agency shall also carry out measures in accordance with Articles 41 and 42.
2. The Agency shall organise the appropriate technical and operational assistance for the host Member State and it may, acting in accordance with the relevant Union and international law, including the principle of *non-refoulement*, take one or more of the following measures:
 - (a) coordinate joint operations for one or more Member States and deploy the standing corps and technical equipment;

- (b) organise rapid border interventions and deploy the standing corps and technical equipment;
- (c) coordinate activities for one or more Member States and third countries at the external borders, including joint operations with third countries;
- (d) deploy the standing corps in the framework of the migration management support teams to, *inter alia*, hotspot areas in order to provide technical and operational assistance, including, where necessary, in return activities;
- (e) within the framework of operations referred to in points (a), (b) and (c) of this paragraph and in accordance with Regulation (EU) No 656/2014 and international law, provide technical and operational assistance to Member States and third countries in support of search and rescue operations for persons in distress at sea which may arise during border surveillance operations at sea;

(f) give priority treatment to the EUROSUR fusion services.

3. The Agency shall finance or co-finance the activities referred to in paragraph 2 from its budget in accordance with the financial rules applicable to the Agency.

4. If the Agency has substantial additional financial needs due to a situation at the external borders, it shall inform the European Parliament, the Council and the Commission thereof without delay.

Article 37

Initiating joint operations and rapid border interventions at the external borders

1. A Member State may request that the Agency launch joint operations to face upcoming challenges, including illegal immigration, present or future threats at its external borders or cross-border crime, or provide increased technical and operational assistance when implementing its obligations with regard to external border control. ***As part of such a request, a Member State may also indicate the profiles of operational staff needed for the joint operation in question, including those staff having executive powers, as applicable.***
2. At the request of a Member State faced with a situation of specific and disproportionate challenges, especially the arrival at points of the external borders of large numbers of third-country nationals trying to enter the territory of that Member State without authorisation, the Agency may deploy a rapid border intervention for a limited period of time on the territory of that host Member State.

3. The executive director shall evaluate, approve and coordinate proposals made by Member States for joint operations or rapid border interventions. Joint operations and rapid border interventions shall be preceded by a thorough reliable and up-to-date risk analysis, thereby enabling the Agency to set an order of priority for the proposed joint operations and rapid border interventions, taking into account the impact levels attributed to external border sections in accordance with Article 34 and the availability of resources.

4. The objectives of a joint operation or rapid border intervention may be achieved as part of a multipurpose operation. Such operations may involve coast guard functions and the prevention of cross-border crime, *focusing on* the fight against migrant smuggling or trafficking in human beings, and migration management, *focusing on* identification, registration, debriefing and return.

Article 38

Operational plans for joint operations

1. In preparation of a joint operation the executive director, in cooperation with the host Member State, shall draw up a list of technical equipment, staff *and profiles of staff* needed, *including those staff having executive powers, as applicable, to be authorised in accordance with Article 82(2). That list shall be drawn up* taking into account the host Member State's available resources *and the host Member State's request under Article 37*. On the basis of those elements, the Agency shall define a package of technical and operational reinforcement as well as capacity-building activities to be included in the operational plan.
2. The executive director shall draw up an operational plan for joint operations at the external borders. The executive director and the host Member State, in *close and timely* consultation with the participating Member States, shall agree on the operational plan detailing the organisational and procedural aspects of the joint operation.

3. The operational plan shall be binding on the Agency, the host Member State and the participating Member States. It shall cover all aspects considered necessary for carrying out the joint operation, including the following:

- (a) description of the situation, with *modus operandi* and objectives of the deployment, including the operational aim;
- (b) the estimated time that the joint operation is expected to last ***in order to achieve its objectives***;
- (c) the geographical area where the joint operation will take place;

- (d) a description of the tasks, *including those requiring executive powers*, responsibilities, including with regard to the respect for fundamental rights *and data protection requirements*, and special instructions for the teams, including on permissible consultation of databases and permissible service weapons, ammunition and equipment in the host Member State;
- (e) the composition of the teams as well as the deployment of other relevant staff;
- (f) command and control provisions, including the names and ranks of the border guards of the host Member State responsible for cooperating with the members of the teams and the Agency, in particular the names and ranks of those border guards who are in command during the period of deployment, and the place of the members of the teams in the chain of command;

- (g) the technical equipment to be deployed during the joint operation, including specific requirements such as conditions for use, requested crew, transport and other logistics, and financial provisions;
- (h) detailed provisions on immediate incident reporting by the Agency to the management board and to relevant national authorities;
- (i) a reporting and evaluation scheme containing benchmarks for the evaluation report, including with regard to the protection of fundamental rights, and final date of submission of the final evaluation report;

- (j) regarding sea operations, specific information on the application of the relevant jurisdiction and ***applicable law*** in the geographical area where the joint operation takes place, including references to national, international and Union law regarding interception, rescue at sea and disembarkation; in that regard the operational plan shall be established in accordance with Regulation (EU) No 656/2014;
- (k) the terms of cooperation with third countries, other Union bodies, offices and agencies or international organisations;
- (l) ***general instructions on how to ensure the safeguarding of fundamental rights during the operational activity of the Agency;***
- (m) 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;

(n) procedures setting out a mechanism to receive and transmit to the Agency complaints against any person participating in *an operational activity of the Agency*, including border guards or other relevant staff of the host Member State and members of the teams, alleging breaches of fundamental rights in the context of their participation in *an operational activity of the Agency*;

(o) logistical arrangements, including information on working conditions and the environment of the areas in which the joint operation is to take place.

4. 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. A copy of the amended or adapted operational plan shall immediately be sent by the Agency to the participating Member States.

5. *This Article shall apply mutatis mutandis to all operations of the Agency.*

Article 39

Procedure for launching a rapid border intervention

1. A request by a Member State to launch a rapid border intervention shall include a description of the situation, possible aims and envisaged needs, ***and the profiles of staff needed, including those staff having executive powers, as applicable.*** If required, the executive director may immediately send experts from the Agency to assess the situation at the external borders of the Member State concerned.
2. The executive director shall immediately inform the management board of a Member State's request to launch a rapid border intervention.
3. When deciding on the request of a Member State, the executive director shall take into account the findings of the Agency's risk analyses and the analysis layer of the European situational picture as well as the outcome of the vulnerability assessment referred to in Article 32 and any other relevant information provided by the Member State concerned or another Member State.

4. The executive director shall immediately assess the possibilities for redeployment of available members of the teams within the standing corps, in particular statutory staff and staff seconded to the Agency by the Member States, present in other operational areas. The executive director shall also assess the additional need to deploy operational staff in accordance with Article 57 and, once staff within the required profiles have been exhausted, to activate the reserve for rapid reaction in accordance with Article 58.

5. The executive director shall take a decision on the request to launch a rapid border intervention within two working days from the date of receipt of the request. The executive director shall simultaneously notify the Member State concerned and the management board in writing of the decision. The decision shall state the main reasons on which it is based. ■

6. *When taking the decision referred to in paragraph 5 of this Article, the executive director shall inform the Member States about the possibility of requesting additional operational staff in accordance with Article 57 and, where applicable, Article 58 by indicating possible numbers and profiles of staff to be provided by each Member State.*

7. If the executive director decides to launch a rapid border intervention, he or she shall deploy available border management teams from the standing corps and equipment from the technical equipment pool in accordance with Article 64, and where necessary, he or she shall decide on the immediate reinforcement by one or more border management teams, in accordance with Article 57.

8. The executive director together with the host Member State shall draw up *and agree upon* an operational plan as referred to in Article 38(2) immediately and, in any event, no later than three working days from the date of the decision.

9. As soon as the operational plan has been agreed upon and provided to the Member States, the executive director shall immediately deploy the operational staff available through redeployments from other operational areas or other duties.

10. In parallel to the deployment referred to in paragraph 9, and where necessary to secure the immediate reinforcement of the border management teams redeployed from other areas or duties, the executive director shall request from each Member State the number and profiles of additional staff to be additionally deployed from their national lists for short-term deployments as referred to in Article 57.

11. If a situation arises where the border management teams referred to in paragraph 7 and the staff referred to in paragraph 10 of this Article are insufficient, the executive director may activate the reserve for rapid reaction by requesting from each Member State the number and profiles of additional staff to be deployed as provided for in Article 58.

12. The information referred to paragraphs 10 and 11 shall be provided in writing to the national contact points and shall indicate the date on which the deployments of staff from each category are to take place. A copy of the operational plan shall also be provided to the national contact points.

13. Member States shall ensure that the number and profiles of staff are immediately made available to the Agency to guarantee a complete deployment in accordance with Article 57 and, if applicable, Article 58.

14. The deployment of the first border management teams redeployed from other areas and other duties shall take place no later than five working days after the date on which the operational plan is agreed between the executive director and the host Member State.

Additional deployment of border management teams shall take place, where necessary, ***no later than twelve working days after the date on which the operational plan is agreed.***

15. Where the rapid border intervention is to take place, the executive director shall, in consultation with the management board, immediately consider the priorities with regard to the Agency's ongoing and planned joint operations at other external borders in order to provide for possible reallocation of resources to the areas of the external borders where a strengthened deployment is most needed.

Article 40

Migration management support teams

1. ***Where a Member State faces disproportionate migratory challenges at particular hotspot areas of its external borders characterised by large inward mixed migratory flows, that Member State may request technical and operational reinforcement by migration management support teams composed of experts from relevant Union bodies, offices and agencies that shall operate in accordance with their mandates.***

That Member State shall submit a request for reinforcement and an assessment of its needs to the Commission. On the basis of that assessment of needs, the Commission shall transmit the request, as appropriate, to the Agency, to EASO, to Europol and to other relevant Union bodies, offices and agencies.

2. The relevant Union bodies, offices and agencies shall examine, *in accordance with their respective mandates*, the Member State's request for reinforcement and the assessment of its needs *for the purpose of defining a comprehensive reinforcement package consisting of various activities coordinated by the relevant Union bodies, offices and agencies*, to be agreed upon by the Member State concerned. *The Commission shall coordinate that process.*

3. The Commission, in cooperation with the host Member State and the relevant Union bodies, offices and agencies *in accordance with their respective mandates*, shall establish the terms of cooperation *at the hotspot area* and shall be responsible for the coordination of the activities of *the migration management support* teams.

4. The technical and operational reinforcement provided, with full respect for fundamental rights, by *the standing corps in the framework of* migration management support teams may include the provision of:

- (a) assistance, with full respect for fundamental rights, in the screening of third-country nationals arriving at the external borders, including the identification, registration, and debriefing of those third-country nationals and, where requested by the Member State, the fingerprinting of third-country nationals ■ and providing information regarding the purpose of these procedures;
- (b) initial information to persons who wish to apply for international protection and the referral of those persons to the competent national authorities of the Member State concerned or to the experts deployed by *EASO*;
- (c) technical and operational assistance in the *field of* return *in accordance with Article 48*, including *the* preparation and organisation of return operations ■ ;
- (d) necessary technical equipment.

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5. Migration management support teams shall include, where necessary, staff with expertise in child protection, trafficking in human beings, protection █ against gender-based persecution *or fundamental rights*.

Article 41

Proposed actions at the external borders

1. , On the basis of the results of the vulnerability assessment or where a critical impact level is attributed to one or more external border sections and taking into account the relevant elements in the Member State's contingency plans, the Agency's risk analysis and the analysis layer of the European situational picture, the executive director shall recommend to the Member State concerned to request that the Agency initiate, carry out *or adjust* joint operations, rapid border interventions or any other relevant actions by the Agency as set out in Article 36.

2. The Member State concerned shall respond to the recommendation of the executive director *referred to in paragraph 1* within *six* working days. In the event of a negative response to the recommendation, the Member State shall also provide the justifications underlying that response. The executive director shall notify *the management board and* the Commission without delay about the recommended actions and the justifications for the negative response, with a view to assessing whether urgent action may be required in accordance with Article 42.

Article 42

Situation at the external borders requiring urgent action

1. Where external border control is rendered ineffective to such an extent that it risks jeopardising the functioning of the Schengen area because:
 - (a) a Member State does not implement the necessary measures in accordance with a decision of the management board referred to in Article 32(10); or
 - (b) a Member State facing specific and disproportionate challenges at the external borders has either not requested sufficient support from the Agency under Article 37, 39 or 40 or is not taking the necessary steps to implement actions under those Articles or under Article 41;

the Council, on the basis of a proposal from the Commission, █ may adopt without delay a decision by means of an implementing act to identify measures to mitigate those risks to be implemented by the Agency and requiring the Member State concerned to cooperate with the Agency in the implementation of those measures. ***The Commission shall consult the Agency before making its proposal.***

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2. Where a situation requiring urgent action arises, the European Parliament shall be informed of that situation without delay as well as of any subsequent measures and decisions taken in response.

3. To mitigate the risk of putting the Schengen area in jeopardy, the *Council* decision referred to in paragraph 1 shall provide for one or more of the following measures to be taken by the Agency:

(a) organise and coordinate rapid border interventions and deploy the standing corps, *including teams from the reserve for rapid reaction*;

(b) deploy the standing corps in the framework of the migration management support teams, in particular at hotspot areas;

- (c) coordinate activities for one or more Member States and third countries at the external borders, including joint operations with third countries;
 - (d) deploy technical equipment;
 - (e) organise return interventions.
4. The executive director shall, within two working days from the date of adoption of the *Council* decision referred to in paragraph 1:

(a) determine the actions to be taken for the practical execution of the measures identified in that decision, including the technical equipment and the number and profiles of the operational staff needed to meet the objectives of that decision;

(b) *draw up a* draft operational plan *and submit it* to the Member States concerned.

5. The executive director and the Member State concerned shall *agree on* the operational plan referred to in point (b) of paragraph 4 within *three* working days from the date of its submission.

6. The Agency shall, without delay, and in any case within five working days from the establishment of the operational plan, deploy the necessary operational staff from the standing corps for the practical execution of the measures identified in the *Council* decision referred to in paragraph 1. Additional teams shall be deployed as necessary at a second stage, and in any case within 12 working days from the *establishment* of the *operational plan*.

7. The Agency *and the Member States* shall, without delay, and in any case within 10 working days from the establishment of the operational plan, *send* the necessary technical equipment *and competent staff to the destination of deployment* for the practical execution of the measures identified in the *Council* decision referred to in paragraph 1.

Additional technical equipment shall be deployed as necessary at a second stage in accordance with Article 64.

8. The Member State concerned shall comply with the *Council* decision referred to in paragraph 1. 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 *agreed upon with the executive director*, in particular by implementing the obligations provided for in Articles 43, 82 and 83.

9. In accordance with Article 57 and, where relevant, Article 39, the Member States shall make available the operational staff determined by the executive director in accordance with paragraph 4 of this Article.

10. *The Commission shall monitor the implementation of the measures identified in the Council decision referred to in paragraph 1 and the actions that the Agency takes for that purpose.* If the Member State concerned does not comply with the *Council* decision referred to in paragraph 1 within 30 days and does not cooperate with the Agency in accordance with to paragraph 8 of this Article, the Commission may trigger the procedure provided for in Article 29 of Regulation (EU) 2016/399.

Article 43

Instructions to the teams

1. During the deployment of border management teams, return teams and migration management support teams, the host Member State *or, in the case of cooperation with a third country in accordance with a status agreement, the third country concerned*, shall issue instructions to the teams in accordance with the operational plan.
2. The Agency, through its coordinating officer, may communicate its views to the host Member State on the instructions given to the teams. In that case, the host Member State shall take those views into consideration and follow them to the extent possible.
3. In cases where the instructions issued to the teams are not in compliance with the operational plan, the coordinating officer shall immediately report to the executive director, who may, if appropriate, take action in accordance with Article 46(3).

4. Members of the teams shall, in the performance of their tasks and in the exercise of their powers, fully respect fundamental rights, including access to asylum procedures and human dignity, ***and shall pay particular attention to vulnerable persons***. Any measures taken in the performance of their tasks and in the exercise of their powers shall be proportionate to the objectives pursued by such measures. While performing their tasks and exercising their powers, they shall not discriminate against persons ***on the basis of any*** grounds ***such as*** sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation ***in line with Article 21 of the Charter***.

5. Members of the teams who are not statutory staff shall remain subject to the disciplinary measures of their home Member State. The home Member State shall provide for appropriate disciplinary or other measures in accordance with its national law regarding violations of fundamental rights or international protection obligations in the course of ***any operational activity by the Agency***.

6. *Statutory staff deployed as members of the teams shall be subject to disciplinary measures as provided for in the Staff Regulations and the Conditions of Employment and measures of a disciplinary nature provided for in the supervisory mechanism referred to in point (a) of Article 55(5).*

Article 44

Coordinating officer

1. The Agency shall ensure the operational implementation of all the organisational aspects of joint operations, pilot projects or rapid border interventions, including the presence of statutory staff.
2. Without prejudice to Article 60, the executive director shall appoint one or more experts from the statutory staff to be deployed as a coordinating officer for each joint operation or rapid border intervention. The executive director shall notify the host Member State of the appointment.

3. The coordinating officer shall act on behalf of the Agency in all aspects of the deployment of the teams. The role of the coordinating officer shall be to foster cooperation and coordination among host and participating Member States. ***At least one fundamental rights monitor shall assist and advise the coordinating officer.*** In particular, the coordinating officer shall:

(a) act as an interface between the Agency, the host Member State and the members of the teams, providing assistance, on behalf of the Agency, on all issues relating to the conditions of the deployment to the teams;

(b) monitor the correct implementation of the operational plan, including, ***in cooperation with the fundamental rights monitors***, as regards the protection of fundamental rights and report to the ***executive director*** on this;

(c) act on behalf of the Agency in all aspects of the deployment of the teams and report to the Agency on all those aspects;

(d) report to the executive director where the instructions issued to the teams by the host Member States are not in compliance with the operational plan, *in particular as regards fundamental rights* and, where appropriate, suggest that the executive director consider taking a decision in accordance with Article 46.

4. In the context of joint operations or rapid border interventions, the executive director may authorise the coordinating officer to assist in resolving any disagreement on the execution of the operational plan and deployment of the teams.

Article 45

Costs

1. The Agency shall fully cover the following costs incurred by Member States in making available their staff for the purposes of deploying them from the standing corps as members of the teams *to the Member States and to third countries for a short term in accordance with Article 57 or to the Member States through the reserve for rapid reaction in accordance with Article 58*:

- (a) travel costs from the home Member State to the host Member State, from the host Member State to the home Member State, within the host Member State for the purposes of deployment *or redeployment within that host Member State or to another host Member State, and for the purposes of deployments to, and redeployments within or to, another third country*;
- (b) costs related to vaccinations;
- (c) costs related to special insurance needs;

- (d) costs related to health care, *including psychological assistance*;
- (e) daily subsistence allowances, including accommodation costs.

■

2. ***On the basis of a proposal of the executive director, the*** management board shall ***adopt*** detailed rules ■ as regards the reimbursement of the costs incurred by staff deployed for a short term in accordance with Articles 57 and 58, and shall update them as necessary. ***To ensure compliance with the applicable legal framework, the executive director shall make such proposal after receiving the positive opinion of the Commission.*** The detailed rules shall be based to the extent possible on simplified cost options in accordance with points (c), (d) and (e) of Article 125(1) of Regulation (EU, Euratom) 2018/1046. Where relevant, the management board shall ***ensure consistency*** with the rules applicable to ■ mission expenses of statutory staff.

Article 46

Decisions to suspend, terminate *or not launch* activities

1. The executive director shall terminate *any activity* of the Agency if the conditions to conduct those activities are no longer fulfilled. The executive director shall inform the Member State concerned prior to such termination.
2. The Member States participating in *an operational activity by the Agency* may request that the executive director terminate that *operational activity*. *The executive director shall inform the management board of such request.*
3. The executive director may, after informing the Member State concerned, withdraw the financing of an activity or suspend or terminate it if the operational plan is not respected by the host Member State.

4. The executive director shall, after consulting the fundamental rights officer and informing the Member State concerned, withdraw the financing for any activity by the Agency, *or suspend or terminate any activity by the Agency, in whole or in part*, if he or she considers that there are violations of fundamental rights or international protection obligations *related to the activity concerned* that are of a serious nature or are likely to persist.

5. *The executive director shall, after consulting the fundamental rights officer, decide not to launch any activity by the Agency where he or she considers that there would already be serious reasons at the beginning of the activity to suspend or terminate it because it could lead to violations of fundamental rights or international protection obligations of a serious nature. The executive director shall inform the Member State concerned of that decision.*

6. The decisions referred to in paragraphs 4 and 5 shall be based on duly justified grounds. When taking such decisions, the executive director shall take into account relevant information such as the number and substance of registered complaints that have not been resolved by a national competent authority, reports of serious incidents, reports from coordinating officers, relevant international organisations and Union institutions, bodies, offices and agencies in the areas covered by this Regulation. The executive director shall inform the management board of such decisions and provide it with justifications therefor.

7. If the executive director decides to suspend or terminate deployment by the Agency of a migration management support team, he or she shall inform the other relevant bodies, offices and agencies active in the hotspot area **■** of that decision.

Article 47

Evaluation of activities

The executive director shall evaluate the results of ***all the Agency's operational activities***. He or she shall transmit detailed evaluation reports to the management board within 60 days following the end of those activities, together with the observations of the fundamental rights officer. The executive director shall make a comprehensive ■ analysis of those results with a view to enhancing the quality, coherence and effectiveness of future activities, and shall include that analysis in the Agency's annual activity report. The executive director ***shall ensure that the Agency takes the analysis of those results into account in future operational activities***.

SECTION 8

ACTION BY THE AGENCY IN THE AREA OF RETURNS

Article 48

Return

1. Without entering into the merits of return decisions, which remain the sole responsibility of the Member States, and in accordance with the respect for fundamental rights, general principles of Union law **and** international law, including **international** protection, **the respect for the principle of non-refoulement** and children's rights, with regard to return, **the Agency shall:**

(a) provide technical and operational assistance to Member States in █ the area of return █, including █ in:

(i) **the collection of information necessary for issuing** return decisions, the identification of third-country nationals **subject to return procedures** and other pre-return, return-related **and post-arrival and post-return** activities of the Member States █, to achieve an integrated system of return management among competent authorities of the Member States, with the participation of relevant authorities of third countries and other relevant stakeholders;

(ii) the acquisition of travel documents, including by means of consular cooperation, without disclosing information relating to the fact that an application for international protection has been made *or any other information that is not necessary for the purpose of the return*;

(iii) *the organisation and coordination of return operations and provide assistance in relation to voluntary returns in cooperation with the Member States*;

(iv) *assisted voluntary returns from the Member States, providing assistance to returnees during the pre-return, return-related and post-arrival and post-return phases, taking into account the needs of vulnerable persons*;

- (b) provide technical and operational assistance to Member States experiencing challenges with regard to *their* return systems;
- (c) develop, *in consultation with the fundamental rights officer*, a *non-binding* reference model for *national IT systems for* return case management which *describes* the structure of *such* systems, as well as provide technical and operational assistance to Member States in developing *such* systems *compatible* with the model;
- (d) **█** operate *and further develop an integrated return management platform* and a communication infrastructure *that enables the linking of the* return management systems of the Member States *with the platform for the purpose of exchanging data and information, including the automated transmission of statistical data*, and provide technical and operational assistance to Member States in connecting to the communication infrastructure;

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- (e) organise, promote and coordinate activities enabling the exchange of information and the identification and pooling of best practices in return matters between the Member States;
- (f) finance or co-finance from its budget, in accordance with the financial rules applicable to the Agency, the operations, interventions and activities referred to in this Chapter, *including reimbursing the costs incurred for the necessary adaptation of the national IT systems for return case management for the purpose of ensuring secure communication to the integrated return management platform.*

2. The technical and operational assistance referred to in point (b) of paragraph 1 shall include activities to help Member States carry out return procedures by the competent national authorities by providing, in particular:

(a) interpreting services;

(b) practical information, *including the* analysis of such information, and recommendations by the Agency on third countries of return relevant for the implementation of this Regulation, in cooperation, where appropriate, with other Union bodies, offices and agencies, *in particular EASO*;

(c) advice on the implementation and management of return procedures in compliance with Directive 2008/115/EC ;

(d) advice on and assistance in *the implementation of* measures *taken by Member States in compliance with Directive 2008/115/EC and international law that are* necessary to ensure the availability of returnees for return purposes and to prevent returnees from absconding *and advice on and assistance in relation to alternatives to detention*;

(e) equipment, resources and expertise for the implementation of return decisions and for the identification of third-country nationals.

3. The Agency shall aim at building synergies and connecting Union-funded networks and programmes in the field of return in close cooperation with the Commission and with the support of relevant stakeholders, including the European Migration Network.

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Article 49

Information exchange systems and management of return

1. ***The Agency shall operate and further develop, in accordance with point (d) of Article 48(1), an integrated return management platform for processing information, including personal data transmitted by the Member States' return management systems, that is necessary for the Agency to provide technical and operational assistance. Personal data shall only include biographic data or passenger lists. Personal data shall be transmitted only where they are necessary for the Agency to assist in the coordination or organisation of return operations to third countries, irrespective of the means of transport. Such personal data shall be transmitted to the platform only once a decision to launch a return operation has been taken, and shall be erased as soon as the operation is terminated.***

Biographic data shall only be transmitted to the platform where they cannot be accessed by members of teams in accordance with Article 17(3) of Regulation (EU) 2018/1860 of the European Parliament and of the Council³⁹.

The Agency may also use the platform for the purpose of securely transmitting biographic or biometric data, including all types of documents which can be considered as proof or prima facie evidence of the nationality of third-country nationals subject to return decisions, where the transmission of such personal data is necessary for the Agency to provide assistance, at the request of a Member State, in confirming the identity and nationality of third-country nationals in individual cases. Such data shall not be stored on the platform and shall be erased immediately following a confirmation of receipt.

³⁹ Regulation (EU) 2018/1860 of the European Parliament and of the Council of 28 November 2018 on the use of the Schengen Information System for the return of illegally staying third-country nationals (*OJ L 312, 7.12.2018, p. 1*).

2. The Agency shall develop, deploy and operate information systems and software applications allowing for the exchange of information for the purpose of return within the European Border and Coast Guard and for the purpose of exchanging personal data.

3. Personal data shall be processed in accordance with Articles 86, 87, 88 and 91, as applicable.

Article 50

Return operations

1. Without entering into the merits of return decisions, ***which remain the sole responsibility of the Member States***, the Agency shall provide Member States with technical and operational assistance and shall ensure the coordination or the organisation of return operations, including through the chartering of aircraft for the purpose of such operations ***and*** organising returns on scheduled flights ***or by other means of transport***. The Agency may, on its own initiative and ***with the agreement of the Member State concerned***, coordinate or organise return operations.

2. Member States shall provide operational data on returns necessary for the assessment of return needs by the Agency *through the platform referred to in Article 49(1)* and shall inform the Agency of their indicative planning as regards the number of returnees and the third countries of return, both with respect to relevant national return operations, and of their needs for assistance or coordination by the Agency. The Agency shall draw up and maintain a rolling operational plan to provide the requesting Member States with the necessary operational assistance and reinforcements, including through technical equipment. The Agency may, either on its own initiative *and with the agreement of the Member State concerned* or at the request of a Member State, include in the rolling operational plan the dates and destinations of return operations it considers necessary, based on a needs assessment. The management board shall decide, on the basis of a proposal from the executive director, on the modus operandi of the rolling operational plan. *The Member State concerned shall confirm to the Agency that all returnees covered by a return operation organised or coordinated by the Agency are the subject of an enforceable return decision.*

Where members of the teams are deployed, they shall consult the Schengen Information System prior to the return of any returnee in order to check whether the return decision issued in relation to that returnee has been suspended or whether its enforcement has been postponed.

The rolling operational plan shall contain the elements necessary for carrying out a return operation, including those concerning the respect for fundamental rights, and shall refer to, inter alia, relevant codes of conduct and procedures for monitoring, reporting and the complaints mechanism.

3. The Agency may provide technical and operational assistance to the Member States and *may also*, either on its own initiative and *with the agreement of the Member State concerned or* at the request of the participating Member States, ensure the coordination or the organisation of return operations for which the means of transport and return escorts are provided by a third country of return ('collecting return operations'). The participating Member States and the Agency shall ensure that the respect for fundamental rights, the principle of *non-refoulement*, ■ the proportionate use of means of constraints *and the dignity of the returnee* are guaranteed during the entire return operation. At least one Member State representative, and one forced-return monitor from the pool established under Article 51 or from the monitoring system of the participating Member State, shall be present throughout the entire return operation until arrival at the third country of return.

4. The executive director shall draw up a return plan for collecting return operations without delay. The executive director and any participating Member State shall agree on the plan detailing the organisational and procedural aspects of the collecting return operation, taking account of the implications for the fundamental rights and risks of such operations. Any amendment to or adaptation of that plan shall require the agreement of the parties referred to in paragraph 3 and in this paragraph.

■ The return plan for collecting return operations shall be binding on the Agency and any participating Member State. It shall cover all the necessary steps for carrying out collecting return operations.

5. Every return operation *organised or coordinated by the Agency* shall be monitored in accordance with Article 8(6) of Directive 2008/115/EC. The monitoring of forced-return operations shall be carried out by the forced-return monitor on the basis of objective and transparent criteria and shall cover the whole return operation from the pre-departure phase until the *handover* of the returnees in the third country of return. The forced-return monitor shall submit a report on each forced-return operation to the executive director, the fundamental rights officer and to the competent national authorities of all the Member States involved in the given operation. If necessary, appropriate follow-up shall be ensured by the executive director and competent national authorities respectively.

6. If the Agency has concerns regarding the respect of fundamental rights at *any stage of* a return operation, it shall communicate them to the participating Member States and to the Commission.

7. The executive director shall evaluate the results of the return operations and shall transmit every six months a detailed evaluation report to *the European Parliament, to the Council, to the Commission and to* the management board covering all return operations conducted in the previous semester, together with the observations of the fundamental rights officer. The executive director shall make a comprehensive comparative analysis of those results with a view to enhancing the quality, coherence and effectiveness of future return operations. The executive director shall include that analysis in the Agency's annual activity report.

8. The Agency shall finance or co-finance return operations from its budget, in accordance with the financial rules applicable to the Agency, giving priority to those conducted by more than one Member State, or from hotspot areas **■** .

Article 51

Pool of forced-return monitors

1. The Agency shall, after *taking due account of the opinion of the* fundamental rights officer, constitute a pool of forced-return monitors from competent bodies *of the Member States* who carry out forced-return monitoring activities in accordance with Article 8(6) of Directive 2008/115/EC and who have been trained in accordance with Article 62 of this Regulation.
2. The management board shall, on the basis of a proposal from the executive director, determine the profile and the number of forced-return monitors to be made available to that pool. The same procedure shall apply with regard to any subsequent changes in the profile and overall numbers.

Member States shall be responsible for contributing to the pool by nominating forced-return monitors corresponding to the defined profile, *without prejudice to the independence of those monitors under national law, where national law so provides. The Agency shall also contribute fundamental rights monitors as referred to in Article 110 to the pool.* Forced-return monitors with specific expertise in child protection shall be included in the pool.

3. Member States' contribution of forced-return monitors to return operations and interventions for the following year shall be planned on the basis of annual bilateral negotiations and agreements between the Agency and Member States. In accordance with those agreements, Member States shall make the forced-return monitors available for deployment at the request of the Agency, unless they are faced with an exceptional situation substantially affecting the discharge of national tasks. Such a request shall be made at least 21 working days before the intended deployment, or five working days in the case of a rapid return intervention.

4. The Agency shall make the forced-return monitors available upon request to participating Member States to monitor, on their behalf, the correct implementation of the return operations and return interventions throughout their duration. It shall make available forced-return monitors with specific expertise in child protection for any return operation involving children.

5. Forced-return monitors shall remain subject to the disciplinary measures of their home Member State in the course of a return operation or return intervention. *Statutory staff deployed as forced-return monitors shall be subject to the disciplinary measures provided for in the Staff Regulations and the Conditions of Employment.*

Article 52

Return teams

1. The Agency may deploy return teams either on its own initiative and ***with the agreement of the Member State concerned*** or at the request of that Member State. The Agency may deploy such return teams during return interventions, in the framework of migration management support teams or as necessary to provide additional technical and operational assistance in the area of return █ . ***Where necessary, return teams shall contain officers with specific expertise in child protection.***
2. Article 40(2) to (5) and Articles 43, 44 and 45 shall apply *mutatis mutandis* to the █ return teams.

Article 53

Return interventions

1. Where a Member State is facing a burden when implementing the obligation to return *returnees*, the Agency shall provide the appropriate technical and operational assistance in the form of a return intervention, either on its own initiative *and with the agreement of the Member State concerned* or at the request of that Member State. Such intervention may consist in the deployment of return teams to the host Member State providing assistance in the implementation of return procedures and the organisation of return operations from the host Member State.

Article 50 shall apply also to return operations organised or coordinated by the Agency in the framework of return interventions.

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2. Where a Member State is facing specific and disproportionate challenges when implementing its obligation to return *returnees*, the Agency shall provide the appropriate technical and operational assistance in the form of a rapid return intervention, either on its own initiative *and with the agreement of the Member State concerned* or at the request of that Member State. A rapid return intervention may consist in the rapid deployment of return teams to the host Member State providing assistance in the implementation of return procedures and the organisation of return operations from the host Member State.

3. In the context of a return intervention, the executive director shall draw up an operational plan without delay, in agreement with the host Member State and the participating Member States. The provisions of Article 38 shall apply *mutatis mutandis*.

4. The executive director shall take a decision on the operational plan as soon as possible and, in the case referred to in paragraph 2, within five working days. The decision shall be immediately notified, in writing, to the Member States concerned and to the management board.

5. The Agency shall finance or co-finance return interventions from its budget in accordance with the financial rules applicable to the Agency.

SECTION 9
CAPABILITIES

Article 54

European Border and Coast Guard standing corps

1. A European Border and Coast Guard standing corps with the capacity set out in Annex I shall be part of the Agency. The standing corps shall be composed of the following *four* categories of operational staff in accordance with the annual availability scheme set out in Annex I:

(a) category 1: statutory staff deployed *as members of the teams* in operational areas in accordance with Article 55, *as well as staff responsible for the functioning of the ETIAS Central Unit*;

(b) category 2: staff seconded from Member States to the Agency for a long term as part of the standing corps ■ in accordance with Article 56;

(c) category 3: staff from Member States who are **ready to be** provided to the Agency for a short-term deployment as part of the standing corps in accordance with Article 57; **and**

(d) **category 4: the reserve for rapid reaction consisting of staff from the Member States who are ready to be deployed in accordance with Article 58 for the purposes of rapid border interventions in accordance with Article 39.**

2. The Agency shall deploy members of the standing corps as members of the border management teams, migration management support teams and return teams in joint operations, rapid border interventions, return interventions or any other relevant operational activities in the Member States or in third countries. **Such activities shall only be carried out with the authorisation of the Member State or the third country concerned. The actual number of staff deployed from the standing corps shall depend on the operational needs.**

Deployment of the standing corps shall be complementary to the efforts undertaken by the Member States.

3. *When providing support to the Member States, ■ the members of the standing corps deployed as members of the teams shall have the ability to carry out border control or return tasks, including tasks requiring executive powers provided for in the relevant national law or, in the case of statutory staff, the tasks requiring executive powers set out in Article 55(7).*

The members of the standing corps shall meet the requirements for specialised training and professionalism as provided for in the third subparagraph of Article 16(1) of Regulation (EU) 2016/399 or other relevant instruments.

4. On the basis of a proposal from the executive director taking into account the Agency's risk analysis, the results of the vulnerability assessment and the multiannual strategic policy cycle for European integrated border management, and building on the numbers and profiles of staff available to the Agency through its statutory staff and ongoing secondments, by 31 March of each year the management board shall adopt a decision :

(a) *defining the profiles of, and setting out the requirements for, operational staff;*

(b) on the number of staff per specific profile of categories 1, 2 and 3 staff to form teams in the following year, *based on the expected operational needs for the following year;*

(c) *specifying further the contributions set out in Annexes II and III by setting* the specific numbers and profiles of staff per Member State to be seconded to the Agency in accordance with Article 56 and to be nominated in accordance with Article 57 in the following year;

(d) specifying further the contributions set out in Annex IV by setting the specific numbers and profiles of staff per Member State under the reserve for rapid reaction to be provided in the following year in the event of rapid border interventions in accordance with Articles 39 and 58 ; and

(e) setting out an indicative multiannual planning of profiles for the subsequent years to facilitate the long-term planning for the Member States' contributions and the recruitment of statutory staff.

5. The crew for technical equipment provided in accordance with Article 64 shall be taken into account as part of the contributions for short-term deployments provided by the Member States pursuant to Article 57 for the following year. With a view to preparing the relevant management board decision referred to in paragraph 4 of this Article, the Member State concerned shall inform the Agency about its intention to deploy the technical equipment with the corresponding crew by the end of January of each year.

6. For the purpose of Article 73, the Agency shall develop and ensure the command and control structures for the effective deployment of the standing corps on the territory of third countries.

7. The Agency may recruit a *sufficient number of statutory staff, which may account for* up to 4 % of the total number of the standing corps *set out in Annex I*, for supportive *or monitoring* functions for the establishment of the standing corps, for the planning and management of its operations and for the acquisition of the Agency's own equipment.

8. *The staff referred to in paragraph 7 and the staff responsible for the functioning of the ETIAS Central Unit shall not be deployed as members of the teams, but shall nevertheless be counted as category 1 staff for the purposes of Annex I.*

Article 55

Statutory staff in the standing corps

1. The Agency shall contribute members of its statutory staff (category 1) to the standing corps to be deployed in operational areas as members of the teams with ■ the tasks and powers *provided for in Article 82*, including the task of operating the Agency's own equipment.
2. ***When recruiting staff, the Agency shall ensure that only candidates who demonstrate a high level of professionalism, adhere to high ethical values and possess appropriate language skills are selected.***
3. In accordance with Article 62(2), following their recruitment, the statutory staff ***to be deployed as members of the teams*** shall undergo *necessary* border-guard or return-related training, *including on fundamental rights*, as relevant ***to the profiles of staff decided by the management board in accordance with Article 54(4), taking into account their previously acquired qualifications and professional experience in the relevant areas.***

The training referred to in the first subparagraph shall be conducted in the framework of dedicated training programmes designed by the Agency, and, on the basis of agreements with selected Member States, implemented in their specialised *institutions for training and education, including the Agency's partnership academies in Member States. Adequate training maps shall be designed for each staff member after his or her recruitment to ensure that he or she is always professionally qualified to fulfil border guard or return-related tasks. Training maps shall be regularly updated.* The Agency shall cover the full cost of training.

Statutory staff who act as technical crew operating the Agency's own equipment shall not need to undergo full border guard or return-related training.

4. Throughout their employment, the Agency shall ensure that its statutory staff discharge their duties as members of the teams *in accordance with the highest standards and in full compliance with fundamental rights*.

5. *On the basis of a proposal from the executive director, the management board shall:*

(a) *establish an appropriate supervisory mechanism to monitor the application of the provisions on use of force by statutory staff, including rules on reporting and specific measures, such as those of a disciplinary nature, with regard to the use of force during deployments;*

(b) *establish rules for the executive director to authorise statutory staff to carry and use weapons in accordance with Article 82 and Annex V, including on mandatory cooperation with the competent national authorities, in particular of the Member State of nationality, the Member State of residence, and the Member State of the initial training; those rules shall also address how the executive director ensures that the conditions for issuing such authorisations continue to be met by statutory staff, in particular as regards handling weapons including the performance of regular shooting tests;*

(c) establish specific rules to facilitate the storage of weapons, ammunition and other equipment in secured facilities and their transportation to the operational areas.

In relation to the rules referred to in point (a) of the first subparagraph of this paragraph, the Commission shall give an opinion on their compliance with the Staff Regulations and Conditions of Employment, in accordance with Article 110(2) of the Staff Regulations. The fundamental rights officer shall be consulted on the proposal from the executive director with regard to those rules.

6. Agency staff who are not qualified to perform border guard or return-related tasks shall only be deployed during joint operations for coordination, **monitoring of fundamental rights** and other related tasks. They shall not form part of the teams.

7. The statutory staff to be deployed as members of the teams shall be able to perform, in accordance with Article 82, the following tasks requiring executive powers, in accordance with the profiles of staff and relevant training:

(a) the verification of the identity and nationality of persons, including consultation of relevant Union and national databases;

(b) the authorisation of entry where the entry conditions, as laid down in Article 6 of Regulation (EU) 2016/399, are fulfilled;

(c) the refusal of entry in accordance with Article 14 of Regulation (EU) 2016/399;

(d) the stamping of travel documents in accordance with Article 11 of Regulation (EU) 2016/399;

- (e) the issuing or refusing of visas at the border in accordance with Article 35 of Regulation (EC) No 810/2009 of the European Parliament and of the Council⁴⁰ and introducing relevant data in the Visa Information System;*
- (f) border surveillance, including patrolling between border crossing points to prevent unauthorised border crossings, to counter cross-border crime and to take measures against persons who have crossed the border illegally, including interception or apprehension;*
- (g) the registering of fingerprints of persons apprehended in connection with the irregular crossing of an external border in Eurodac in accordance with Chapter III of Regulation (EU) No 603/2013 of the European Parliament and of the Council⁴¹;*
- (h) liaising with third countries with a view to identifying and obtaining travel documents for returnees;*
- (i) escorting third-country nationals subject to forced-return procedures.*

⁴⁰ Regulation (EC) No 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas (Visa Code) (*OJ L 243, 15.9.2009, p. 1*).

⁴¹ Regulation (EU) No 603/2013 of the European Parliament and of the Council of 26 June 2013 on the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of Regulation (EU) No 604/2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person and on requests for the comparison with Eurodac data by Member States' law enforcement authorities and Europol for law enforcement purposes, and amending Regulation (EU) No 1077/2011 establishing a European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice (*OJ L 180, 29.6.2013, p. 1*).

Article 56

Member States' participation in the standing corps through long-term secondment

1. The Member States shall contribute to the standing corps by seconding operational staff to the Agency as members of the teams (category 2). The duration of individual secondments shall be **24 months**. ***With the agreement of the home Member State and the Agency, individual secondments may be prolonged once for another 12 or 24 months.*** In order to facilitate the implementation of the financial support system referred to in Article 61, secondments shall, as a general rule, start at the beginning of a calendar year.
2. Each Member State shall be responsible for ensuring the continuous contribution of operational staff as seconded members of the teams in accordance with Annex II. ***The payment of costs incurred by staff deployed under this Article shall be made in accordance with the rules adopted pursuant to Article 95(6).***

3. The operational staff seconded to the Agency shall have the **■** tasks and powers of the members of the teams *in accordance with Article 82*. The Member State that has seconded those operational staff shall be considered to be their home Member State. During the secondment, the locations and duration of the deployments of seconded members of the teams shall be decided by the executive director in accordance with the operational needs. ***The Agency shall ensure the continuous training of the operational staff during their secondment.***

4. By 30 June of each year, each Member State shall *indicate the candidates* for secondment ***among*** their operational staff in accordance with the specific numbers and profiles of staff decided by the management board for the following year as referred to in Article 54(4). The Agency ***shall*** verify whether the operational staff proposed by Member States correspond to the defined profiles of staff and possess the necessary language skills. By 15 September of each year, the Agency shall accept the proposed candidates or, in cases of non-compliance with the required profiles, insufficient language skills, misconduct or infringement of the applicable rules during previous deployments, shall refuse the candidates in question ***and request that the Member State propose other candidates for secondment.***

5. Where, due to force majeure, an individual operational staff member cannot be seconded or is unable to continue his or her secondment, the Member State concerned shall ensure that that staff member is replaced by another operational staff member having the required profile.

Article 57

Member States' participation in the standing corps through short-term deployments

1. In addition to the secondments under Article 56, by 30 June of each year, the Member States shall contribute to the standing corps by nominating border guards and other relevant staff to the *preliminary* national list of *available* operational staff for short-term deployments (category 3) in accordance with the *contributions set out* in Annex III and in accordance with the specific numbers and profiles of staff decided by the management board for the following year as referred to in Article 54(4). The *preliminary* national lists of nominated operational staff shall be communicated to the Agency. ***The final composition of the annual list shall be confirmed to the Agency after the conclusion of the annual bilateral negotiations by 1 December of that year.***

2. Each Member State shall ensure that nominated operational staff are available at the request of the Agency in accordance with the arrangements set out in this Article. Each staff member shall be available for a period of up to ■ four months within a calendar year.

However, Member States may decide to deploy an individual staff member beyond four months. Such an extension shall be counted as a separate contribution of that Member State for the same profile or another required profile if the staff member possesses the necessary skills. The payment of the costs incurred by staff deployed under this Article shall be made in accordance with the rules adopted pursuant to Article 45(2).

3. *The operational staff deployed under this Article shall have the tasks and powers of the members of the teams in accordance with Article 82.*

4. The Agency may verify whether *the* operational staff nominated for short-term deployments by Member States correspond to the defined profiles of staff and possess the necessary language skills. The Agency *shall refuse nominated* operational staff in cases of insufficient language skills, misconduct or infringement of the applicable rules during previous deployments. *The Agency shall also refuse nominated operational staff in the event of non-compliance with the required profiles unless the operational staff member in question qualifies for another profile allocated to that Member State. In the event of the refusal of a staff member by the Agency, the Member State concerned shall ensure that that staff member is replaced by another operational staff member having the required profile.*

5. By 31 July of each year, the Agency shall request that Member States contribute specific individual operational staff members for deployment as part of joint operations for the following year *within the required numbers and profiles*. The periods of individual deployment shall be decided in the annual bilateral negotiations and agreements between the Agency and Member States.

6. Following *the annual bilateral negotiations*, Member States shall make the operational staff *from the national lists referred to in paragraph 1* available for *specific* deployments within the numbers and profiles specified in the request of the Agency.

7. Where, due to force majeure, an individual operational staff member cannot be deployed in accordance with the agreements, the Member State concerned shall ensure that such staff member is replaced by another staff member from the list with the required profile.

8. In the event of an increased need for the reinforcement of an ongoing joint operation, a need to launch a ***rapid border intervention or a*** new joint operation not specified in the relevant annual work programme ***or*** in the corresponding result of annual bilateral negotiations, the ***deployment shall be carried out within the limits set out in Annex III. The*** executive director shall inform the Member States without delay about the additional needs by indicating possible numbers and profiles of operational staff to be provided by each Member State. Once an amended operational plan or, where relevant, a new operational plan is agreed upon by the executive director and the host Member State, the formal request for the number and profiles of operational staff shall be made by the executive director. The members of the teams shall be deployed from each Member State within 20 working days from that formal request ***without prejudice to Article 39.***

9. Where the risk analysis or any available vulnerability assessment shows that a Member State is faced with a situation that would substantially affect the discharge of its national tasks, ***that Member State shall contribute operational staff in accordance with the requests referred to in paragraph 5 or 8 of this Article. However, those contributions shall not cumulatively exceed*** half of that Member State's ***contribution*** for the year in question as set out in Annex III. Where a Member State invokes such an exceptional situation, it shall provide comprehensive reasons and information on the situation to the Agency in writing, the content of which shall be included in the report referred to in Article 65.

10. The duration of the deployment for a specific operation shall be determined by the home Member State but in any event shall not be less than 30 days, except where the operation of which the deployment is a part has a duration shorter than 30 days.

11. The technical crew taken into account for the contributions of Member States in accordance with Article 54(5) shall only be deployed in accordance with the agreements arising from the annual bilateral negotiations for the corresponding items of technical equipment referred to Article 64(9).

By way of derogation from paragraph 1 of this Article, Member States shall include in their annual lists the technical crew referred to in the first subparagraph of this paragraph only after the conclusion of the annual bilateral negotiations. Member States may adjust the relevant annual lists in the event of any changes of the technical crew during the year in question. Member States shall notify those changes to the Agency.

The verification referred to in paragraph 4 of this Article shall not concern the competence to operate the technical equipment.

Crew members having exclusively technical duties shall only be indicated by function on national annual lists.

The duration of deployment of technical crews shall be determined in accordance with Article 64.

Article 58

Member States' participation in the standing corps through the reserve for rapid reaction

- 1. The Member States shall contribute operational staff to the standing corps by means of a reserve for rapid reaction (category 4) to be activated for rapid border interventions in accordance with Article 37(2) and Article 39, provided that the operational staff in category 1, 2 and 3 have already been fully deployed for the rapid border intervention in question.*
- 2. Each Member State shall be responsible for ensuring that operational staff are available in the numbers and with the corresponding profiles decided by the management board for the following year as referred to in Article 54(4), at the request of the Agency within the limits set out in Annex IV and in accordance with the arrangements set out in this Article. Each operational staff member shall be available for a period of up to four months within a calendar year.*
- 3. The specific deployments in the framework of rapid border interventions from the reserve for rapid reaction shall take place in accordance with Article 39(11) and (13).*

Article 59

■ Review of the standing corps

1. By 31 *December 2023*, in particular on the basis of the reports referred to in Article 62(10) and Article 65, the Commission shall *present to the European Parliament and to the Council* a ■ *review of the overall number and composition of the standing corps, including the size of individual Member States' contributions to the standing corps, as well as of the expertise and professionalism of the standing corps and of the training it receives. The review shall also examine whether it is necessary to maintain the reserve for rapid reaction as part of the standing corps.*

The review shall describe and take into account existing and potential operational needs for the standing corps covering rapid reaction capacities, significant circumstances affecting the capability of Member States to contribute to the standing corps and the evolution of the statutory staff as regards the contribution of the Agency to the standing corps.

2. *By 29 February 2024, the Commission shall, where necessary, submit appropriate proposals to amend Annexes I, II, III and IV. Where the Commission does not present a proposal, it shall explain the reasons therefor.*

Article 60

Antenna offices

1. Subject to an agreement *with* the host Member State *or the explicit inclusion of this possibility in the status agreement concluded with the host third country*, the Agency may establish antenna offices on *the territory of that Member State or third country in order* to facilitate and improve coordination of operational activities, including in the field of return, organised by the Agency in that Member State, in the neighbouring region, *or in that third country* and in order to ensure the effective management of the human and technical resources of the Agency. The antenna offices shall be established *in accordance with operational needs* for the period of time necessary for the Agency to carry out significant operational activities in that specific Member State, in the neighbouring region, *or in the third country* concerned. That period of time may be prolonged, if necessary.

Before an antenna office is established, all budgetary consequences shall be carefully assessed and calculated and the relevant amounts shall be budgeted in advance.

2. The Agency and the host Member State *or host third country* in which the antenna office is established shall ■ make the necessary arrangements to provide the best possible conditions needed to fulfil the tasks assigned to the antenna office. *The place of employment for the staff working in antenna offices shall be set in accordance with Article 95(2).*

3. The antenna offices shall, where applicable:

(a) provide operational and logistical support and ensure the coordination of Agency's activities in the operational areas concerned;

(b) provide operational support to the Member State *or the third country* in the operational areas concerned;

(c) monitor the activities of the teams and regularly report to the Agency's headquarters;

- (d) cooperate with the host Member State *or host third country* on all issues related to the practical implementation of the operational activities organised by the Agency in that Member State *or third country*, including any additional issues that might have occurred in the course of these activities;
- (e) support the coordinating officer referred to in Article 44 in his or her cooperation with the participating Member States on all issues related to their contribution to the operational activities organised by the Agency and, where necessary, liaise with the Agency's headquarters;
- (f) support the coordinating officer and *fundamental rights monitors assigned to monitor an operational activity* in facilitating, where necessary, the coordination and communication between the Agency's *teams* and the relevant authorities of the host Member State *or host third country as well any relevant tasks*;

- (g) organise logistical support relating to the deployment of the members of the teams and the deployment and use of technical equipment;
- (h) provide all other logistical support regarding the operational area for which a given antenna office is responsible, with a view to facilitating the smooth running of the operational activities organised by the Agency;
- (i) support the Agency's liaison officer, ***without prejudice to his or her tasks and functions referred to in Article 31***, in identifying any current or future challenges for the border management of the area for which a given antenna office is responsible, for the implementation of the return *acquis* and regularly report to the Agency's headquarters;
- (j) ensure the effective management of the Agency's own equipment in the areas covered by its activities, including the possible registration and long-term maintenance of that equipment and any logistical support needed.

4. Each antenna office shall be managed by a representative of the Agency appointed by the executive director as a head of an antenna office. The head of the antenna office shall oversee the overall work of the office and shall act as its single point of contact with the Agency's headquarters.

5. On the basis of a proposal from the executive director, the management board shall decide on the establishing, composition, duration and, where needed, possible prolongation of the duration of the operation of an antenna office taking into account the opinion of the Commission and the agreement of the host Member State or the host third country.

6. *The host Member State shall provide the Agency with assistance to ensure operational capacity.*

7. The executive director shall report to the management board on a quarterly basis on the activities of antenna offices. The activities of the antenna offices shall be described in a separate section of the annual activity report.

Article 61

Financial support for the development of the standing corps

1. Member States shall be entitled to receive funding on a yearly basis in the form of financing not linked to costs, in order to support the development of human resources to secure their contributions to the standing corps as set out in Annexes II, III and IV, in accordance with point (a) of **Article** 125(1) of Regulation (EU, Euratom) 2018/1046. That financing shall be payable after the end of the year concerned and upon fulfilment of conditions laid down in paragraphs 3 and 4 of this Article. That financing shall be based on a reference amount as set in paragraph 2 of this Article and shall **amount** to, where applicable:

(a) 100 % of the reference amount multiplied by the number of **operational staff** indicated **for the year N + 2** for secondment in accordance with Annex II;

(b) **37 %** of the reference amount multiplied by the number of **operational staff** effectively deployed in accordance with Article 57 within the limit set in Annex III **and in accordance with Article 58 within the limit set in Annex IV, as applicable**;

(c) a one-off payment of 50 % of the reference amount multiplied by the number of operational staff recruited by the Agency as statutory staff; that payment shall apply to staff departing from national services, being in active service no longer than 15 years at the time of recruitment by the Agency.

2. The reference amount shall be equivalent to the annual basic salary for a contract agent in function group III, grade 8, step 1 as set out in Article 93 of the Conditions of Employment and subject to a correction co-efficient applicable in the Member State concerned.

3. The annual payment of the **amount** referred to in point (a) of paragraph 1 of this Article shall only become due provided that the Member States increase their respective overall national border guard staffing accordingly through the recruitment of new **staff** in the period concerned. The relevant information for the purpose of reporting shall be provided to the Agency in the annual bilateral negotiations and shall be verified through the vulnerability assessment in the following year. The annual payment of the amount referred to in point (b) of paragraph 1 of this Article shall be due in **full in** relation **to** the number of **staff** effectively deployed for **a consecutive or non-consecutive period of** four months in accordance with Article 57 within the limit set in Annex III **and** in accordance with **Article 58 within the limit set in Annex IV. For effective deployments referred to in point (b) of paragraph 1 of this Article, the payments shall be calculated on a pro rata basis with a reference period of four months.**

The Agency shall grant an advance payment linked to the annual payments of the amounts referred to in points (a) and (b) of paragraph 1 of this Article in accordance with the implementing act referred to in paragraph 4 of this Article following the submission of a specific and justified request by the contributing Member State.

4. The Commission shall adopt an implementing act laying down detailed rules for the annual payment and the monitoring of the applicable conditions provided in paragraph 3 of this Article. *Those rules shall include arrangements for advanced payments upon fulfilment of the conditions set out in paragraph 3 of this Article, as well as the arrangements for pro-rata calculations, including with respect to cases where the deployment of technical crew would exceptionally exceed the maximum national contributions set out in Annex III.* That implementing act shall be adopted in accordance with the examination procedure referred to in Article 122(2).

5. *When implementing the financial support under this Article, the Agency and the Member States shall ensure compliance with the principles of co-financing and no double funding.*

Article 62

Training

1. The Agency shall, taking into account the capability roadmap referred to in Article 9(8), where available, and in cooperation with the appropriate training entities of the Member States, and, where appropriate, EASO, FRA, *the European Union Agency for the Operational Management of Large-Scale IT Systems in the Area of Freedom, Security and Justice (eu-LISA)* and the European Union Agency for Law Enforcement Training (*CEPOL*), develop specific training tools, including specific training in the protection of children and other persons in a vulnerable situation. ***Training content shall take into account relevant research outcomes and best practices.*** ***The Agency*** shall provide border guards, return specialists, ***return escorts*** and other relevant staff who are members of the standing corps ***as well as forced-return monitors and fundamental rights monitors*** with ***specialised*** training relevant to their tasks and powers. ***The Agency*** shall conduct regular exercises with those border guards and other members of the teams in accordance with the ***specialised*** training schedule referred to in the annual work programme of the Agency.

2. The Agency shall ensure that, *in addition to the training referred to in Article 55(3)*, all statutory staff *to be deployed as members of the teams* have received adequate training in relevant Union and international law, including on fundamental rights, access to international protection, *guidelines for the purpose of identifying persons seeking protection and directing them towards the appropriate procedures, guidelines for addressing the special needs of children, including unaccompanied minors, victims of trafficking in human beings, persons in need of urgent medical assistance and other particularly vulnerable persons*, and, where *it is intended that they participate in sea operations*, search and rescue, prior to their initial deployment in operational activities organised by the Agency.

Such training shall also cover the use of force in accordance with Annex V.

3. For the purpose of paragraph 2, the Agency, on the basis of agreements with selected Member States, shall implement the necessary training programmes in those Member States' specialised institutions for training and education, including the Agency's partnership academies in Member States. The Agency shall ensure that the training follows the common core curricula, is harmonised and fosters mutual understanding and a common culture based on the values enshrined in the Treaties. The Agency shall cover the full cost of training.

The Agency, after obtaining the approval of the management board, may set up an Agency training centre to further facilitate the inclusion of a common European culture in the training provided.

4. The Agency shall take the necessary initiatives to ensure that all staff of the Member States who participate in the teams from the standing corps, have received the training referred to in the first subparagraph of paragraph 2.

5. The Agency shall take the necessary initiatives to ensure training for staff involved in return-related tasks who are allocated to the standing corps or to the pool referred to in Article 51. The Agency shall ensure that statutory staff and all staff who participate in return operations or return interventions have received training in relevant Union and international law, including on fundamental rights, access to international protection ***and on referral of vulnerable persons***, prior to their participation in operational activities organised by the Agency.

6. The Agency shall establish and further develop common core curricula for the training of border guards and provide training at European level for instructors of the border guards of Member States, including with regard to fundamental rights, access to international protection and relevant maritime law, as well as a common curriculum for the training of staff involved in return-related tasks. The common core curricula shall aim to promote the highest standards and best practices in the implementation of Union border management and return law. The Agency shall draw up the common core curricula after consulting the consultative forum referred to in Article 108 (the ‘consultative forum’) and the fundamental rights officer. Member States shall integrate the common core curricula into the training they provide to their national border guards and staff involved in return-related tasks.

7. The Agency shall also offer additional training courses and seminars on subjects related to external border control and return of third-country nationals for officers of the competent services of Member States and, where appropriate, of third countries.
8. The Agency may organise training activities in cooperation with Member States and third countries on their territory.
9. The Agency shall establish an exchange programme enabling border guards participating in its teams and staff participating in the return intervention teams to acquire knowledge or specific know-how from experience and good practices abroad by working with border guards and staff involved in return-related tasks in a Member State other than their own.

10. The Agency shall establish and further develop an internal quality control mechanism to ensure a high level of training, expertise and professionalism of statutory staff, in particular statutory staff who participate in the operational activities of the Agency. On the basis of the implementation of the quality control mechanism, the Agency shall prepare an annual evaluation report which shall be annexed to the annual activity report.

Article 63

Acquisition or leasing of technical equipment

1. The Agency may acquire, either on its own or as co-owner with a Member State, or lease technical equipment to be deployed during joint operations, pilot projects, rapid border interventions, activities in the area of return, including return operations and return interventions, migration management support team deployments or technical assistance projects in accordance with the financial rules applicable to the Agency.

2. On the basis of a proposal from the executive director, **the** management board shall adopt a comprehensive multiannual strategy on how the Agency's own technical capabilities **are to** be developed taking into account the multiannual strategic policy cycle for European integrated border management, including the capability roadmap referred to in Article 9(8), where available, and the budgetary resources made available for that purpose in the multiannual financial framework. ***To ensure compliance with the applicable legal, financial and policy frameworks, the executive director shall only make the proposal after receiving the positive opinion of the Commission.***

The multiannual strategy shall be accompanied by a detailed implementation plan specifying the timeline for acquisition or leasing, procurement planning and risk mitigation. If the management board, when adopting the strategy and the plan, decides to depart from the opinion of the Commission, it shall provide the Commission with a justification for doing so. Following the adoption of the multiannual strategy, the implementation plan shall become part of the multiannual programming component of the single programming document referred to in point (k) of Article 100(2).

3. The Agency may acquire technical equipment by decision of the executive director in consultation with the management board in accordance with the applicable procurement rules. Any acquisition or leasing of equipment entailing significant costs to the Agency shall be preceded by a thorough needs and cost-benefit analysis. Any expenditure related to such acquisition or leasing shall be provided for in the Agency's budget adopted by the management board.

4. Where the Agency acquires or leases major technical equipment such as *aircraft*, *service vehicles* or vessels, the following conditions shall apply:

(a) in the case of an acquisition by the Agency or co-ownership, the Agency shall agree with one Member State that that Member State is to provide that the equipment be registered *as being on government service* in accordance with the applicable law of that Member State, *including prerogatives and immunities for such technical equipment under international law*;

(b) in the case of leasing, the equipment shall be registered in a Member State.

5. On the basis of a model agreement drawn up by the Agency and approved by the management board, the Member State of registration and the Agency shall agree on terms ensuring the operability of the equipment. In the case of co-owned assets, the terms shall also cover the periods of full availability of the assets for the Agency and determine the use of those assets, including specific provisions on rapid deployment during rapid border interventions *and the financing of those assets*.

6. Where the Agency does not have the required qualified statutory staff, the Member State of registration or the supplier of technical equipment shall provide the necessary experts and technical crew to operate the technical equipment in a legally sound and safe manner *in accordance with the model agreement referred to in paragraph 5 of this Article and planned on the basis of the annual bilateral negotiations and agreements referred to in Article 64(9)*. In such a case, technical equipment owned solely by the Agency shall be made available to the Agency upon its request and the Member State of registration may not invoke the exceptional situation referred to in Article 64(9).

When requesting a Member State to provide technical equipment and staff, the Agency shall take into account the particular operational challenges facing that Member State at the time of the request.

Article 64

Technical equipment pool

1. The Agency shall set up and keep centralised records of equipment in a technical equipment pool composed of equipment owned either by the Member States or by the Agency and equipment co-owned by the Member States and by the Agency for its operational activities.
2. Equipment solely owned by the Agency shall be fully available for deployment at any time.
3. Equipment co-owned by the Agency at a share of more than 50 % shall also be available for deployment in accordance with an agreement between a Member State and the Agency, concluded in accordance with Article 63(5).

4. The Agency shall ensure the compatibility and interoperability of the equipment listed in the technical equipment pool.

5. For the purposes of paragraph 4, ***the Agency, in close cooperation with the Member States and the Commission***, shall define technical standards for the equipment to be deployed in the activities of the Agency, where necessary. Equipment that is acquired by the Agency, whether as sole or co-owner, and equipment owned by Member States which is listed in the technical equipment pool shall meet those standards.

6. On the basis of a proposal from the executive director taking into account the Agency's risk analysis and the results of vulnerability assessments, the management board shall decide, by 31 March of each year, on the minimum number of items of technical equipment required to meet the needs of the Agency in the following year, in particular as regards carrying out joint operations, migration management support team deployments, rapid border interventions, activities in the area of return, including return operations and return interventions. The Agency's own equipment shall be included in the minimum number of items of technical equipment. That decision shall establish rules relating to the deployment of technical equipment in the operational activities.

If the minimum number of items of technical equipment proves to be insufficient to carry out the operational plan agreed for such activities, the Agency shall revise that minimum number on the basis of justified needs and of an agreement with the Member States.

7. The technical equipment pool shall contain the minimum number of items of equipment identified as needed by the Agency per type of technical equipment. The equipment listed in the technical equipment pool shall be deployed during joint operations, migration management support team deployments, pilot projects, rapid border interventions, return operations or return interventions.

8. The technical equipment pool shall include a rapid reaction equipment pool containing a limited number of items of equipment needed for possible rapid border interventions. The contributions of Member States to the rapid reaction equipment pool shall be planned in accordance with the annual bilateral negotiations and agreements referred in paragraph **9 of this Article**. For the equipment on the list of the items in that pool, Member States may not invoke the exceptional situation referred to in paragraph **9 of this Article**.

The Member State concerned shall send the equipment on that list, **together with the necessary experts and technical crew**, to the destination for deployment as soon as possible, and, in any event, no later than 10 days after the date on which the operational plan is agreed.

The Agency shall contribute to this pool with equipment at the Agency's disposal as referred to in Article 63(1).

9. Member States shall contribute to the technical equipment pool. The contribution by Member States to the pool and deployment of the technical equipment for specific operations shall be planned on the basis of annual bilateral negotiations and agreements between the Agency and Member States. In accordance with those agreements and to the extent that it forms part of the minimum number of items of technical equipment for a given year, Member States shall make their technical equipment available for deployment at the request of the Agency, unless they are faced with an exceptional situation substantially affecting the discharge of national tasks. If a Member State invokes such an exceptional situation, it shall provide, in writing, comprehensive reasons and information on the situation to the Agency, the content of which shall be included in the report referred to in Article 65(1). The Agency's request shall be made at least 45 days before the intended deployment of major technical equipment and 30 days before the intended deployment of other equipment. The contributions to the technical equipment pool shall be reviewed annually.

10. On the basis of a proposal from the executive director, the management board shall decide, on a yearly basis, on the rules relating to technical equipment, including the required overall minimum numbers of items per type of technical equipment and the terms for the deployment and reimbursement of costs as well as on the limited number of items of technical equipment for a rapid reaction equipment pool. For budgetary purposes that decision shall be taken by the management board by 31 March of each year.

11. Where a rapid border intervention takes place, Article 39(15) shall apply accordingly.

12. Where unexpected needs for technical equipment for a joint operation or a rapid border intervention arise after the minimum number of items of technical equipment has been set and those needs cannot be met from the technical equipment pool or the rapid reaction equipment pool, Member States shall, where possible, on an *ad hoc* basis, make the necessary technical equipment available for deployment to the Agency upon its request.

13. The executive director shall regularly report to the management board on the composition and the deployment of equipment which is part of the technical equipment pool. Where the minimum number of items of technical equipment required in the pool has not been met, the executive director shall inform the management board without delay. The management board shall take a decision on the prioritisation of the deployment of the technical equipment urgently and take the appropriate steps to remedy the shortfall. The management board shall inform the Commission of the shortfall and the steps it has taken. The Commission shall subsequently inform the European Parliament and the Council thereof and of its own assessment.

14. Member States shall register in the technical equipment pool all the means of transport and operating equipment purchased under the specific actions of the Internal Security Fund in accordance with Article 7(1) of Regulation (EU) No 515/2014 of the European Parliament and of the Council⁴² or, where relevant, any other *future* dedicated Union funding made available to the Member States *with the clear objective* of increasing the operational capacity of the Agency. That technical equipment shall form part of the minimum number of items of technical equipment for a given year.

⁴² Regulation (EU) No 515/2014 of the European Parliament and of the Council of 16 April 2014 establishing, as part of the Internal Security Fund, the instrument for financial support for external borders and visa and repealing Decision No 574/2007/EC (OJ L 150, 20.5.2014, p. 143).

Upon a request made by the Agency in the framework of the annual bilateral negotiations, the Member States shall make technical equipment co-financed under the specific actions of the Internal Security Fund or by any other *future* dedicated Union funding *as specified in the first subparagraph* of this paragraph available for deployment to the Agency. Each item of equipment shall be made available for a period of *up to four* months *as planned in the annual bilateral negotiations*. *Member State may decide to deploy an item of equipment beyond four months*. In the case of an operational activity referred to in Article 39 or 42 of this Regulation, Member States may not invoke the exceptional situation referred to in paragraph 9 of this Article.

15. The Agency shall manage the records of the technical equipment pool as follows:
- (a) classification by type of equipment and by type of operation;
 - (b) classification by owner (Member State, Agency, other);
 - (c) overall numbers of items of equipment required;

- (d) crew requirements if applicable;
- (e) other information, such as registration details, transportation and maintenance requirements, national applicable export regimes, technical instructions, or other information relevant to appropriate use of the equipment;
- (f) indication as to whether an item of equipment was financed from Union funding.

16. The Agency shall finance 100 % of the deployment of technical equipment which forms part of the minimum number of items of technical equipment provided by a given Member State for a given year. The deployment of technical equipment which does not form part of the minimum number of items of technical equipment shall be co-financed by the Agency, up to a maximum of 100 % of the eligible expenses, taking into account the particular circumstances of the Member States deploying such technical equipment.

Article 65

Reporting on the Agency's capabilities

1. On the basis of a proposal from the executive director, the management board shall adopt and submit to the European Parliament, to the Council and to the Commission an annual report on the implementation of Articles 51, 55, 56, 57, 58, 63 and 64 ('annual implementation report').
2. The annual implementation report shall include, in particular:
 - (a) the number of staff that each Member State has committed to the standing corps, ***including through the reserve for rapid reaction***, and to the pool of forced-return monitors;
 - (b) the number of statutory staff that the Agency has committed to the standing corps;
 - (c) the number of staff actually deployed from the standing corps, by each Member State ***and by the Agency*** per profile in the previous year;

- (d) the number of items of technical equipment that each Member State and the Agency has committed to the technical equipment pool;
- (e) the number of items of technical equipment deployed by each Member State and the Agency in the previous year from the technical equipment pool **■** ;
- (f) commitments to and deployments of equipment from the rapid reaction equipment pool;
- (g) the development of the Agency's own human and technical capabilities.

3. The annual implementation report shall list the Member States that invoked the exceptional situation referred to in Article 57(9) and Article 64(9) in the previous year and include the reasons and information provided by the Member State concerned.

4. To ensure transparency, the executive director shall inform the management board on a quarterly basis on the elements listed in paragraph 2 in relation to the ongoing year.

Article 66

Research and innovation

1. The Agency shall proactively monitor and contribute to research and innovation activities relevant for European integrated border management including the use of advanced *border control* technology, taking into account the capability roadmap referred to in Article 9(8). The Agency shall disseminate the results of that research to the European Parliament, to the Member States and to the Commission in accordance with Article 92. It may use those results as appropriate in joint operations, rapid border interventions, return operations and return interventions.
2. The Agency, taking into account the capability roadmap referred to in Article 9(8), shall assist the Member States and the Commission in identifying key research themes. The Agency shall assist Member States and the Commission in drawing up and implementing the relevant Union framework programmes for research and innovation activities.

3. The Agency shall implement the parts of the Framework Programme for Research and Innovation which relate to border security. For that purpose, and where the Commission has delegated the relevant powers to it, the Agency shall have the following tasks:

- (a) managing some stages of programme implementation and some phases in the lifetime of specific projects on the basis of the relevant work programmes adopted by the Commission;
- (b) adopting the instruments of budget execution for revenue and expenditure and carrying out all the operations necessary for the management of the programme;
- (c) providing support in programme implementation.

4. The Agency may plan and implement pilot projects regarding matters covered by this Regulation.

5. The Agency shall make public information on its research projects, including demonstration projects, the cooperation partners involved and the project budget.



SECTION 10

THE EUROPEAN TRAVEL INFORMATION AND AUTHORISATION SYSTEM (ETIAS)

Article 67

ETIAS Central Unit

The Agency shall ensure the setting-up and operation of an ETIAS Central Unit as referred to in Article 7 of **Regulation (EU) 2018/1240** .

SECTION 11
COOPERATION



Article 68

Cooperation of the Agency with Union institutions, bodies, offices, agencies, and
international organisations

1. The Agency shall cooperate with Union institutions, bodies, offices and agencies, and may cooperate with international organisations, within their respective legal frameworks, and shall make use of existing information, resources and systems available in the framework of EUROSUR.

In accordance with the first subparagraph, the Agency shall cooperate, in particular, with:

- (a) the Commission and the European External Action Service (EEAS);
- (b) Europol;
- (c) *EASO*;
- (d) FRA;
- (e) Eurojust;
- (f) the European Union Satellite Centre;
- (g) EFCA and EMSA;

- (h) eu-LISA;
- (i) the European Union Aviation Safety Agency (EASA) and the Network Manager of the European Air Traffic Management Network (EATMN) ;

■

- (j) CSDP missions and operations, *in accordance with their mandates, with a view to ensuring the following:*
 - (i) *the promotion of European integrated border management standards;*
 - (ii) *situational awareness and risk analysis.*

The Agency may also cooperate with the following international organisations, as relevant to its tasks, within their respective legal frameworks:

- (a) the United Nations through its relevant offices, agencies, organisations and other entities, in particular the Office of the United Nations High Commissioner for Refugees, the Office of the High Commissioner for Human Rights, the International Organization for Migration, the United Nations Office on Drugs and Crime and the International Civil Aviation Organization;*
- (b) the International Criminal Police Organization (Interpol);*
- (c) the Organisation for Security and Cooperation in Europe;*
- (d) the Council of Europe and the Commissioner for Human Rights of the Council of Europe;*
- (e) the Maritime Analysis and Operations Centre - Narcotics (MAOC-N).*

2. The cooperation referred to in paragraph 1 shall take place within the framework of working arrangements concluded with the entities referred to in paragraph 1. Such arrangements shall be subject to the Commission's prior approval. The Agency shall inform the European Parliament *and the Council* of any such arrangements.

3. As regards the handling of classified information, the working arrangements referred to in paragraph 2 shall provide that the Union body, office or agency or international organisation concerned comply with security rules and standards equivalent to those applied by the Agency. An assessment visit shall be conducted prior to the conclusion of an arrangement and the Commission shall be informed of the outcome of the assessment visit.

4. Although outside the scope of this Regulation, the Agency shall also engage in cooperation with the Commission and, where relevant, with Member States and the EEAS in activities relating to the customs area, including risk management, where those activities support each other. That cooperation shall be without prejudice to the existing competence of the Commission, of the High Representative of the Union for Foreign Affairs and Security Policy and of the Member States.

5. Union institutions, bodies, offices, agencies, and the international organisations referred to in paragraph 1, shall use information received from the Agency only within the limits of their competence and insofar as they respect fundamental rights, including data protection requirements.

Any transmission ■ of personal data processed by the Agency to other Union institutions, bodies, offices and agencies under *points (c) and (d) of Article 87(1)* shall be subject to specific working arrangements regarding the exchange of personal data ■ .

The working arrangements referred to in the second subparagraph shall include a provision ensuring that personal data transmitted to Union institutions, bodies, offices and agencies by the Agency may be processed for another purpose only if authorised by the Agency and if compatible with the initial purpose for which the data were collected and transmitted by the Agency. Those Union institutions, bodies, offices and agencies shall keep written records of a case-by-case compatibility assessment.

Any transfer of personal data by the Agency *to international organisations under point (c) of Article 87(1)* shall be *in accordance* with the data protection provisions laid down in Section 2 of Chapter IV.

In particular, the Agency shall ensure that any working arrangement concluded with international organisations regarding the exchange of personal data under point (c) of Article 87(1) complies with Chapter V of Regulation (EU) 2018/1725 and is subject to the authorisation of the European Data Protection Supervisor, where provided for by that Regulation.

The Agency shall ensure that personal data transferred to international organisations are only processed for the purposes for which they were transferred.

6. The exchange of information between the Agency and Union institutions, bodies, offices and agencies, and international organisations referred to in paragraph 1, shall be conducted via the communication network referred to in Article 14 or via other accredited information exchange systems which fulfil the criteria of availability, confidentiality and integrity.

Article 69

European cooperation on coast guard functions

1. Without prejudice to EUROSUR, the Agency shall, in cooperation with EFCA and EMSA, support national authorities carrying out coast guard functions at national and Union level and, where appropriate, at international level by:

(a) sharing, fusing and analysing information available in ship reporting systems and other information systems hosted by or accessible to those agencies, in accordance with their respective legal bases and without prejudice to the ownership of data by Member States;

- (b) providing surveillance and communication services based on state-of-the-art technology, including space-based and ground infrastructure and sensors mounted on any kind of platform;
- (c) building capacity by drawing up guidelines and recommendations and by establishing best practices as well as by providing training and exchange of staff;
- (d) enhancing the exchange of information and cooperation on coast guard functions, including by analysing operational challenges and emerging risks in the maritime domain;
- (e) sharing capacity by planning and implementing multipurpose operations and by sharing assets and other capabilities, to the extent that those activities are coordinated by those agencies and are agreed to by the competent authorities of the Member States concerned.

2. The precise forms of cooperation on coast guard functions between the Agency, EFCA and EMSA shall be determined in a working arrangement in accordance with their respective mandates and with the financial rules applicable to those agencies. Such an arrangement shall be approved by the management board of the Agency and the administrative boards of EFCA and EMSA. ***The Agency, EFCA and EMSA shall use information received in the context of their cooperation only within the limits of their legal framework and in compliance with fundamental rights, including data protection requirements.***

3. The Commission shall, in close cooperation with the Member States, the Agency, EFCA and EMSA , make available a practical handbook on European cooperation on coast guard functions. That handbook shall contain guidelines, recommendations and best practices for the exchange of information. The Commission shall adopt the handbook in the form of a recommendation.

Article 70

Cooperation with Ireland and the United Kingdom

1. The Agency shall facilitate operational cooperation of the Member States with Ireland and the United Kingdom in specific activities.
2. For the purposes of EUROSUR, the exchange of information and cooperation with Ireland and the United Kingdom may take place on the basis of bilateral or multilateral agreements between Ireland or the United Kingdom respectively and one or several neighbouring Member States or through regional networks based on those agreements. The national coordination centres shall be the contact points for the exchange of information with the corresponding authorities of Ireland and the United Kingdom within EUROSUR.

3. The agreements referred to in paragraph 2 shall be limited to the following exchanges of information between a national coordination centre and the corresponding authority of Ireland or the United Kingdom:

(a) information contained in the national situational picture of the Member State, to the extent such information was transmitted to the Agency for the purposes of the European situational picture;

(b) information collected by Ireland or the United Kingdom which is relevant for the purposes of the European situational picture;

(c) information as referred to in Article 25(5).

4. Information provided in the context of EUROSUR by the Agency or by a Member State which is not party to an agreement as referred to in paragraph 2 shall not be shared with Ireland or the United Kingdom without the prior approval of the Agency or that Member State. The Member States and the Agency shall be bound by the refusal to share that information with Ireland or the United Kingdom.

5. The onward transmission or other communication of information exchanged under this Article to third countries or to third parties shall be prohibited.
6. The agreements referred to in paragraph 2 shall include provisions on the financial costs arising from the participation of Ireland or the United Kingdom in the implementation of those agreements.
7. Support to be provided by the Agency pursuant to points (n), (o) and (p) of Article 10 (1) shall cover the organisation of return operations of Member States in which Ireland or the United Kingdom also participates.
8. The application of this Regulation to the borders of Gibraltar shall be suspended until the date on which an agreement is reached on the scope of the measures concerning the crossing by persons of the external borders.

█
Article 71

Cooperation with third countries

1. The Member States and the Agency shall cooperate with third countries for the purpose of **European** integrated border management and migration policy █ in accordance with point (g) of Article 3(1),.
2. On the basis of the policy priorities set out in accordance with Article 8(4), the Agency shall provide technical and operational assistance to third countries within the framework of the external action policy of the Union, including with regard to the protection of fundamental rights **and personal data** and with regard to the principle of *non-refoulement*.
3. The Agency and Member States shall comply with Union law, including norms and standards which form part of the Union *acquis*, including where cooperation with third countries takes place on the territory of those third countries.
4. ***The establishment of cooperation with third countries shall serve to promote European integrated border management standards.***

Article 72

Cooperation of Member States with third countries

1. Member States may *cooperate* at an operational level with one or more third countries *in relation to the areas covered by this Regulation*. Such cooperation *may include* the exchange of information *and may* take place on the basis of bilateral or multilateral agreements, *other forms of arrangements, or* through regional networks established on the basis of those agreements.
2. When concluding the bilateral and multilateral agreements referred to in paragraph 1 of this Article, Member States *may* include provisions concerning the exchange of information and cooperation *for the purposes* of EUROSUR in accordance with Articles 75 *and 89*.

3. The bilateral and multilateral agreements and other forms of arrangements referred to in paragraph 1 shall comply with Union and international law on fundamental rights and on international protection, including the Charter, the European Convention for the Protection of Human Rights and Fundamental Freedoms and the 1951 Convention relating to the Status of Refugees, the 1967 Protocol thereto, and in particular the principle of *non-refoulement*. When implementing such agreements and arrangements, Member States shall ■ assess and take into account the general situation in the third country *on a regular basis*, and shall have regard to Article 8.

Article 73

Cooperation between the Agency and third countries

1. The Agency may cooperate, to the extent required for the fulfilment of its tasks, with the authorities of third countries competent in matters covered by this Regulation. The Agency shall comply with Union law, including norms and standards which form part of the Union acquis, including where cooperation with third countries takes place on the territory of those third countries.

2. When cooperating with the authorities of third countries, as referred to in paragraph 1 of this Article, ***the Agency*** shall act within the framework of the external action policy of the Union, including with regard to the protection of fundamental rights and personal data, the principle of *non-refoulement*, ***the prohibition of arbitrary detention and the prohibition of torture and inhuman or degrading treatment or punishment***, with the support of, and in coordination with, Union delegations and, where relevant, CSDP missions and operations ***in accordance with point (j) of the second subparagraph of Article 68(1)***.

3. In circumstances requiring the deployment of border management **■** teams from the standing corps to a third country where the members of the teams will exercise executive powers, a status agreement *drawn up on the basis of the model status agreement referred to in Article 76(1)*, shall be concluded by the Union with the third country concerned *on the basis of Article 218 of the Treaty on the Functioning of the European Union (TFEU)*. The status agreement shall cover all aspects that are necessary for carrying out the actions. It shall set out, in particular, the scope of the operation, provisions on civil and criminal liability, the tasks and powers of the members of the teams, *measures related to the establishment of an antenna office and practical measures related to the respect of fundamental rights*. The status agreement shall ensure that fundamental rights are fully respected during those operations *and shall provide for a complaints mechanism. The European Data Protection Supervisor shall be consulted on the provisions of the status agreement related to the transfer of data if those provisions differ substantially from the model status agreement.*

4. Where available, **the Agency** shall also act within the framework of working arrangements concluded with the authorities of third countries referred to in paragraph 1 of this Article in accordance with Union law and policy, in accordance with Article 76(4).

The working arrangements referred to in the first subparagraph of this paragraph shall specify the scope, nature and purpose of the cooperation and shall be related to the management of operational cooperation. Such working arrangements may include provisions concerning the exchange of sensitive non-classified information and cooperation in the framework of EUROSUR in accordance with Article 74(3).

The Agency shall ensure that the third countries to which information is transferred only process that information for the purposes for which it was transferred. Any working arrangements on exchanging classified information shall be concluded in accordance with Article 76(4) of this Regulation. ***The Agency shall request prior authorisation from the European Data Protection Supervisor where those working arrangements provide for the transfer of personal data and where provided for by Regulation (EU) 2018/1725.***

5. The Agency shall contribute to the implementation of *the Union external policy on return and readmission within the framework* of the external action policy of the Union and regarding matters covered by this Regulation.

6. The Agency may receive Union funding in accordance with the provisions of the relevant instruments supporting third countries and activities relating to them. It may launch and finance technical assistance projects in third countries regarding matters covered by this Regulation and in accordance with the financial rules applicable to the Agency. *Such projects shall be included in the single programming document referred to in Article 102.*

7. The Agency shall inform the European Parliament, *the Council and the Commission* of activities conducted pursuant to this Article *and, in particular, of the activities related to technical and operational assistance in the field of border management and returns in third countries, and the deployment of liaison officers, and shall provide them with detailed information on compliance with fundamental rights. The Agency shall make public the agreements, working arrangements, pilot projects and technical assistance projects with third countries in accordance with Article 114(2).*

8. *The Agency* shall include an assessment of the cooperation with third countries in its annual reports.

Article 74

Technical and operational assistance provided by the Agency to third countries

1. **The** Agency may coordinate operational cooperation between Member States and third countries and provide ***technical and operational assistance*** to third countries in the context of European integrated border management.
2. The Agency may carry out actions ***related to European integrated border management on the territory*** of a third country ■ subject to the agreement of that third country ■ .
3. Operations ***on the territory of a third country*** shall be ***included in the annual work programme adopted by the management board in accordance with Article 102, and shall be*** carried out on the basis of an operational plan agreed between the Agency and the third country concerned ***and in consultation with the participating Member States***. Where a ***Member State or Member States neighbour the third country or border the operational area of the third country***, the operational plan ***and any amendments thereto*** shall be subject to ***the*** agreement of that Member State or those Member States. ***Articles 38, 43, 46, 47 and 54 to 57 shall apply mutatis mutandis to deployments in third countries.***

4. The executive director shall ensure the security of the staff deployed in third countries.

For the purpose of the first subparagraph, Member States shall inform the executive director of any concern related to the security of their nationals should they be deployed on the territory of certain third countries.

Where the security of any staff member deployed in third countries cannot be guaranteed, the executive director shall take appropriate measures by suspending or terminating the corresponding aspects of the technical and operational assistance provided by the Agency to that third country.

5. Without prejudice to the deployment of the members of the standing corps in accordance with Articles 54 to 58, the participation of Member States in operations on the territory of third countries shall be voluntary.

In addition to the relevant mechanism referred to in Article 57(9) and paragraph 4 of this Article, where the security of its participating staff cannot be guaranteed to the satisfaction of the Member State, that Member State may opt out of its respective contribution to the operation in the third country in question. Where a Member State invokes such an exceptional situation, it shall provide comprehensive reasons and information on the situation to the Agency in writing, the content of which shall be included in the report referred to in Article 65. Such reasons and information shall be provided during the annual bilateral negotiations or no later than 21 days prior to the deployment. The deployment of staff seconded in accordance with Article 56 shall be subject to the consent of the home Member State communicated upon notification by the Agency and no later than 21 days prior to the deployment.

6. Operational plans as referred to in paragraph 3 may include provisions concerning the exchange of information and cooperation for the purpose of EUROSUR in accordance with Articles 75 and 89.

I

Article 75

Exchange of information with third countries in the framework of EUROSUR

1. The national coordination centres and, where relevant, the Agency shall be the contact points for the exchange of information and cooperation with third countries *for the purposes* of EUROSUR.
2. The provisions concerning exchange of information and cooperation *for the purposes* of EUROSUR contained in the bilateral or multilateral agreements referred to in Article 72(2) shall *address*:
 - (a) the specific situational pictures shared with third countries;
 - (b) the data originating from third countries which can be shared in the European situational picture and the procedures for sharing those data;
 - (c) the procedures and conditions by which EUROSUR fusion services can be provided to third countries' authorities;
 - (d) the detailed rules regarding cooperation and the exchange of information with third-country observers for the purpose of EUROSUR.

3. Information provided in the context of EUROSUR by the Agency or by a Member State which is not party to an agreement as referred to in Article 72(1) shall not be shared with a third country under that agreement without the prior approval of the Agency or of that Member State. The Member States and the Agency shall be bound by the refusal to share that information with the third country concerned.

Article 76

Role of the Commission with regard to cooperation with third countries

I

1. The Commission, after consulting the Member States, the Agency, FRA and the European Data Protection Supervisor, shall draw up a model status agreement for actions conducted on the territory of third countries.

2. The Commission, *in cooperation with* the Member States and the Agency, shall draw up model provisions ■ for the exchange of information in the framework of EUROSUR *in accordance with Articles 70(2) and 72(2)*.

The Commission, after consulting the Agency *and other relevant Union bodies, offices or agencies, including FRA and the European Data Protection Supervisor*, shall draw up a model for the working arrangements referred to in Article 73(4). *That model shall include provisions related to fundamental rights and data protection safeguards addressing practical measures.*

■

3. Before a new bilateral or multilateral agreement as referred to in Article 72(1) is concluded, the Member States concerned shall notify the Commission of *the draft provisions related to border management and returns* ■ .

The Member States concerned shall notify the provisions of such existing and new bilateral and multilateral agreements related to border management and returns to the Commission, which shall inform the Council and the Agency thereof.

4. Before the management board approves any working arrangements *between the Agency and competent authorities of* third countries, the Agency shall notify them to the Commission, which shall give its prior approval. *Before any such working arrangement is concluded, the Agency shall provide the European Parliament with detailed information as regards the parties to the working arrangement and its envisaged content.*

5. The Agency shall notify the operational plans referred to in Article 74(3) to the Commission. Any decision to deploy liaison officers to third countries in accordance with Article 77 shall be subject to receiving the prior opinion of the Commission. The European Parliament shall be kept fully informed of those activities without delay.

Article 77

Liaison officers in third countries

1. The Agency may deploy experts from its statutory staff *and other experts* as liaison officers, who should enjoy the highest possible protection when carrying out their duties in third countries. They shall form part of the local or regional cooperation networks of immigration liaison officers and security experts of the Union and of the Member States, including the network set up pursuant to Regulation (EU) 2019/1240. By decision of the management board, the Agency may lay down the specific profiles of liaison officers, depending on the operational needs with regard to the third country concerned.
2. Within the framework of the external action policy of the Union, priority for the deployment of liaison officers shall be given to those third countries which, on the basis of a risk analysis, constitute a country of origin or transit regarding illegal immigration. The Agency may receive liaison officers posted by those third countries on a reciprocal basis. The management board shall, on the basis of a proposal from the executive director, adopt the list of priorities on a yearly basis. The deployment of liaison officers shall be approved by the management board following the opinion of the Commission.

3. The tasks of the Agency's liaison officers shall include establishing and maintaining contacts with the competent authorities of the third country to which they are assigned with a view to contributing to the prevention of and fight against illegal immigration and the return of returnees, including by providing technical assistance in the identification of third-country nationals and the acquisition of travel documents. Such tasks shall be carried out in compliance with Union law and shall respect fundamental rights. The Agency's liaison officers shall coordinate closely with Union delegations, ***with Member States in accordance with Regulation (EU) 2019/1240*** and, where relevant, with CSDP missions and operations as set out in point (j) of the second subparagraph of Article 68(1). ***Wherever possible, they shall have their offices in the same premises as the Union delegations.***

4. ***In third countries where return liaison officers are not deployed by the Agency, the Agency may support a Member State in deploying a return liaison officer to provide support to the Member States, as well as to support the Agency's activities, in accordance with Article 48.***

Article 78

Observers participating in the Agency's activities

1. The Agency may, with the agreement of the Member States concerned, invite observers of Union institutions, bodies, offices, agencies or international organisations and CSDP missions and operations *referred to in point (j) of the second subparagraph of Article 68(1)* to participate in its activities, in particular in joint operations and pilot projects, risk analysis and training, to the extent that their presence is in accordance with the objectives of those activities, may contribute to the improvement of cooperation and the exchange of best practices, and does not affect the overall safety and security of those activities. The participation of such observers in risk analysis and training may take place only with the agreement of the Member States concerned. As regards joint operations and pilot projects, the participation of observers shall be subject to the agreement of the host Member State. Detailed rules on the participation of observers shall be included in the operational plan. Those observers shall receive appropriate training from the Agency prior to their participation.

2. The Agency may, with the agreement of the Member States concerned, invite observers from third countries to participate in its activities at the external borders, return operations, return interventions and training, as referred to in Article 62, to the extent that their presence is in accordance with the objectives of those activities, may contribute to improving cooperation and the exchange of best practices, and does not affect the overall safety of those activities ***or the safety of third-country nationals.*** Detailed rules on the participation of observers shall be included in the operational plan. Those observers shall receive appropriate training from the Agency prior to their participation. They shall be required to adhere to the codes of conduct of the Agency while participating in its activities.

3. ***The Agency shall ensure that the presence of observers does not pose any risk related to respect for fundamental rights.***

CHAPTER III

False and Authentic Documents Online (FADO)

Article 79

■ The Agency shall take over and operate *the* False and Authentic Documents Online ('*FADO*') *system established in accordance with Joint Action 98/700/JHA.*

CHAPTER IV

General provisions

SECTION 1

GENERAL RULES

Article 80

Protection of fundamental rights and a fundamental rights strategy

1. The European Border and Coast Guard shall guarantee the protection of fundamental rights in the performance of its tasks under this Regulation in accordance with relevant Union law, in particular the Charter, **and** relevant international law, including the 1951 Convention relating to the Status of Refugees, the 1967 Protocol thereto, ***the Convention on the Rights of the Child*** and obligations related to access to international protection, in particular the principle of *non-refoulement*.

For that purpose, the Agency, *with the contribution of and subject to the endorsement by the fundamental rights officer*, shall draw up, implement and further develop a fundamental rights strategy *and action plan*, including an effective mechanism for monitoring respect for fundamental rights in all the activities of the Agency.

2. In the performance of its tasks, the European Border and Coast Guard shall ensure that no person, in contravention of the principle of *non-refoulement*, be forced to disembark in, forced to enter, or conducted to a country, or be otherwise handed over or returned to the authorities of a country ***where there is, inter alia, a serious risk that he or she would be subjected to the death penalty, torture, persecution, or other inhuman or degrading treatment or punishment, or where his or her life or freedom would be threatened on account of his or her race, religion, nationality, sexual orientation, membership of a particular social group or political opinion,*** or from which there is a risk of expulsion, ***removal, extradition*** or return to another country in contravention of the principle of *non-refoulement*.

3. In the performance of its tasks, the European Border and Coast Guard shall take into account the special needs of children, unaccompanied minors, persons with disabilities, victims of trafficking in human beings, persons in need of medical assistance, persons in need of international protection, persons in distress at sea and other persons in a particularly vulnerable situation, and shall address those needs within its mandate. The European Border and Coast Guard shall in all its activities pay particular attention to children's rights and ensure that the best interests of the child are respected.

4. In the performance of its tasks, in its relations with Member States and in its cooperation with third countries, the Agency shall take into account the reports of the consultative forum referred to in Article 108 and the reports of the fundamental rights officer.

Article 81

Code of conduct

1. The Agency shall, in cooperation with the consultative forum, draw up and further develop a code of conduct *which shall apply* to all border control operations coordinated by the Agency and all persons participating in the activities of the Agency. The code of conduct shall lay down procedures intended to guarantee the principles of the rule of law and respect for fundamental rights with particular focus on vulnerable persons, including children, unaccompanied minors and other persons in a vulnerable situation, as well as on persons seeking international protection.

2. The Agency shall, in cooperation with the consultative forum, draw up and further develop a code of conduct for return *operations and return interventions*, which shall apply during all return operations and return interventions coordinated or organised by the Agency. That code of conduct shall describe common standardised procedures to simplify the organisation of return operations and return interventions, and shall assure return in a humane manner and with full respect for fundamental rights, in particular the principles of human dignity, the prohibition of torture and of inhuman or degrading treatment or punishment, the right to liberty and security and the right to the protection of personal data and non-discrimination.

3. The code of conduct for return shall in particular pay attention to the obligation of Member States to provide for an effective forced-return monitoring system as set out in Article 8(6) of Directive 2008/115/EC and to the fundamental rights strategy.

Article 82

Tasks and powers of the members of the teams

1. Members of the teams shall have the capacity to perform ■ tasks and exercise ■ powers for border control and return as well as those which are necessary for the realisation of the objectives of *Regulations (EU) No 656/2014 and (EU) 2016/399 and Directive 2008/115/EC*.
2. *The performance of tasks and the exercise of powers by members of the teams, in particular those requiring executive powers, shall be subject to the authorisation of the host Member State on its territory as well as to applicable Union, national or international law, in particular Regulation (EU) No 656/2014, as described in the operational plans referred to in Article 38.*
3. While performing their tasks and exercising their powers, members of the teams shall *fully ensure respect for fundamental rights and shall* comply with Union and international law *and the* national law of the host Member State.

4. Without prejudice to Article 95(1) as regards statutory staff, members of the teams shall only perform tasks and exercise powers under instructions from and, as a general rule, in the presence of border guards or staff involved in return-related tasks of the host Member State. The host Member State may authorise members of the teams to act on its behalf.

5. *The host Member State may report incidents related to non-compliance with the operational plan by members of the teams, including in relation to fundamental rights, to the Agency via the coordinating officer for possible follow-up, which may include disciplinary measures.*

6. Statutory staff who are members of the teams ■ shall wear ■ the uniform of the standing corps while performing their tasks and exercising their powers. Members of the teams who are *seconded* from Member States for a *long term or who are deployed for a short term* shall wear ■ their own uniform while performing their tasks and exercising their powers.

By way of derogation from the first subparagraph of this paragraph, the decision of the management board referred to in point (a) of Article 54(4) shall indicate the profiles to which the obligation to wear a uniform does not apply due to the specific nature of the operational activity.

All members of the teams shall wear visible personal identification and a blue armband with the insignias of the Union and of the Agency on their uniforms, identifying them as participating in a joint operation, migration management support team deployment, pilot project, rapid border intervention, return operation or return intervention. For the purposes of identification *vis-à-vis* the national authorities of the host Member State, members of the teams shall at all times carry an accreditation document, which they shall present upon request.

The design and specifications for the uniforms of the *statutory staff* shall be established by a *decision of the management board, on the basis of a proposal from the executive director made after receiving the opinion of the Commission* **█** .

7. █ For staff who are seconded to the Agency *or deployed from a Member State* for a short term, the *ability to carry* and use █ service weapons, ammunition and equipment shall be subject to the home Member State's national law.

The *ability to carry* and use █ service weapons, ammunition and equipment by the statutory █ staff *who are deployed as members of the teams* shall be subject to the framework and detailed rules laid down *in this Article* and Annex V.

For the purpose of implementing this paragraph, the executive director may authorise statutory staff to carry and use weapons in accordance with the rules adopted by the management board, in line with point (b) of Article 55(5).

█

8. *Members of the teams, including statutory staff, shall be authorised for the relevant profiles by the host Member State to perform tasks during a deployment that require the use of force, including the carrying and use of service weapons, ammunition and equipment, and shall be subject to the consent of either the home Member State or, for statutory staff, the Agency. The use of force, including the carrying and use of service weapons, ammunition and equipment, shall be exercised in accordance with the national law of the host Member State and in the presence of border guards of the host Member State.* The host Member State may, with the consent of the home Member State or the Agency, where appropriate, authorise members of the teams to use force *on its territory* in the absence of border guards of the host Member State.

The host Member State may prohibit the carrying of certain service weapons, ammunition and equipment, provided that its own law applies the same prohibition to its own border guards or staff when involved in return-related tasks. The host Member State, in advance of the deployment of the members of the teams, shall inform the Agency of the permissible service weapons, ammunition and equipment and of the conditions for their use. The Agency shall make this information available to Member States.

9. Service weapons, ammunition and equipment may be used in legitimate self-defence and in legitimate defence of members of the teams or of other persons in accordance with the national law of the host Member State *in line with relevant principles of international human rights law and the Charter*.

10. For the purpose of this Regulation, the host Member State shall authorise members of the teams to consult Union databases, the consultation of which is necessary for fulfilling operational aims specified in the operational plan on border checks, border surveillance and return, *through their national interfaces or another form of access provided in the Union legal acts establishing such databases, as applicable*. The host Member State may also authorise members of the teams to consult its national databases where necessary for the same purpose. Member States shall ensure that they provide such database access in an efficient and effective manner. Members of the teams shall consult only those data which are *strictly necessary* for performing their tasks and exercising their powers. The host Member State shall, in advance of the deployment of the members of the teams, inform the Agency of the national and Union databases which may be consulted. The Agency shall make this information available to all Member States participating in the deployment.

That consultation shall be carried out in accordance with Union data protection law and the national data protection law of the host Member State.

11. Decisions to refuse entry in accordance with Article 14 of Regulation (EU) 2016/399 *and decisions refusing visas at the border in accordance with Article 35 of Regulation (EC) No 810/2009* shall be taken only by border guards of the host Member State or by members of the teams if they are authorised by the host Member State to act on its behalf.

Article 83

Accreditation document

1. The Agency shall, in cooperation with the host Member State, issue a document in the official language of the host Member State and another official language of the institutions of the Union to the members of the teams for the purpose of identifying them and as proof of the holder's rights to perform tasks and exercise powers as referred to in Article 82. That document shall include the following features of each member of the teams:

- (a) name and nationality;
- (b) rank or job title;
- (c) a recent digitised photograph; and
- (d) tasks authorised to be performed during the deployment.

2. The document shall be returned to the Agency at the end of each joint operation, migration management support team deployment, pilot project, rapid border intervention, return operation or return intervention.

Article 84

Civil liability *of the members of the team*

1. Without prejudice to Article 95, where members of the teams are operating in a host Member State, that Member State shall be liable in accordance with its national law for any damage caused by them during their operations.

2. Where such damage is caused by the gross negligence or wilful misconduct *of the members of the teams seconded or deployed by the Member States*, the host Member State may request the home Member State to reimburse it for any sums that the host Member State has paid to the injured parties or persons entitled to receive such sums on behalf of the injured parties.

Where such damage is caused by gross negligence or wilful misconduct by the *statutory* staff, the host Member State may request the Agency to reimburse it for any sums that the host Member State has paid to the injured parties or persons entitled to receive such sums on behalf of the injured parties. ***This shall be without prejudice to any action before the Court of Justice of the European Union (the ‘Court of Justice’) against the Agency in accordance with Article 98.***

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 between a Member State and 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 .

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

Article 85

Criminal liability *of the members of the teams*

Without prejudice to Article 95, during a joint operation, pilot project, migration management support team deployment, rapid border intervention, return operation or return intervention, members of the teams *in the territory of the host Member State, including statutory staff*, 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.

SECTION 2

PROCESSING OF PERSONAL DATA BY THE *EUROPEAN BORDER AND COAST GUARD*

Article 86

General rules on processing of personal data by the Agency

1. The Agency shall apply Regulation (EU) 2018/1725 when processing personal data.
2. The management board shall *adopt internal rules on the application of Regulation (EU) 2018/1725* by the Agency, including rules concerning the data protection officer of the Agency.

The Agency may, in accordance with Article 25 of Regulation (EU) 2018/1725, adopt internal rules restricting the application of Articles 14 to 22, 35 and 36 of that Regulation . In particular, the Agency may, for the performance of its tasks in the area of return, provide for internal rules restricting the application of those provisions on a case-by-case basis as long as the application of those provisions would risk jeopardising return procedures. Such restrictions shall respect the essence of the fundamental rights and freedoms, shall be necessary and proportionate to the objectives pursued and shall contain specific provisions, where relevant, as referred to in Article 25(2) of Regulation (EU) No 2018/1725.

3. The Agency may transfer *the* personal data *referred to in Articles 49, 88 and 89* to a third country or to an international organisation in accordance with *Chapter V of Regulation (EU) No 2018/1725* insofar as such transfer is necessary for the performance of the Agency's tasks. *The Agency shall ensure that personal data that are transferred to a third country or to an international organisation are only processed for the purpose for which they were provided. The Agency shall indicate, at the moment of transferring personal data to a third country or to an international organisation, any restrictions on access to or use of those data, in general or specific terms, including as regards transfer, erasure or destruction. Where the need for such restrictions becomes apparent after the transfer of personal data, the Agency shall inform the third country or the international organisation accordingly. The Agency shall ensure that the third country or international organisation concerned complies with such restrictions.*

4. Transfers of personal data to third countries shall not prejudice the rights of applicants for international protection and of beneficiaries of international protection, in particular as regards non-refoulement and the prohibition against disclosing or obtaining information set out in Article 30 of Directive 2013/32/EU of the European Parliament and of the Council⁴³.

5. Member States and the Agency, as appropriate, shall ensure that information that is transferred or disclosed to third countries pursuant to this Regulation is not transmitted onward to other third countries or third parties. Provisions to that effect shall be included in any agreement or arrangement concluded with a third country providing for the exchange of information.

⁴³ Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (*OJ L 180, 29.6.2013, p. 60*).

Article 87

Purposes of processing of personal data

1. The Agency may process personal data only for the following purposes:
 - (a) performing its tasks of organising and coordinating joint operations, pilot projects, rapid border interventions and in the framework of the migration management support teams *as referred to in Articles 37 to 40*;
 - (b) performing its tasks of supporting Member States and third countries in pre-return and return activities, operating return management systems, as well as coordinating or organising return operations and providing technical and operational assistance to Member States and third countries in accordance with Article 48;

- (c) facilitating the exchange of information with Member States, *the Commission, the EEAS and the following Union bodies, offices and agencies and international organisations: EASO, the European Union Satellite Centre, EFCA, EMSA, EASA and the Network Manager of the EATMN*, in accordance with Article 88;
- (d) *facilitating the exchange of information with the law enforcement authorities of the Member States, Europol or Eurojust in accordance with Article 90;*
- (e) risk analysis by the Agency in accordance with Article 29;
- (f) *performing its tasks* in the framework of EUROSUR in accordance with Article 89;
- (g) *operating the FADO system in accordance with Article 79;*
- (h) administrative tasks.

2. Member States and their law enforcement authorities, the Commission, the EEAS, and those Union bodies, offices and agencies and international organisations referred to in points (c) and (d) of paragraph 1, that provide personal data to the Agency shall determine the purpose or the purposes for which those data are to be processed as referred to in paragraph 1. The Agency may ***decide to*** process such personal data for a different purpose which also falls under paragraph 1 only ***on a case-by-case basis after having determined that such processing is compatible with the initial purpose for which the data were collected and if authorised by the provider of the personal data. The Agency shall keep written records of case-by-case compatibility assessments.***

3. ***The Agency, the*** Member States and their law enforcement authorities, the Commission, the EEAS, and those Union bodies, offices and agencies and international organisations referred to in points (c) and (d) of paragraph 1, may indicate, at the moment of transmitting personal data, any restrictions on access to those data or use of such data, in general or specific terms, including as regards the transfer, erasure or destruction of such data. Where the need for such restrictions becomes apparent after the transfer of personal data, they shall inform the ***recipients*** accordingly. The ***recipients*** shall comply with such restrictions.

Article 88

Processing of personal data collected during joint operations, *return operations*, *return interventions*, pilot projects, rapid border interventions, and migration management support team deployments

1. *Before each joint operation, return operation, return intervention, pilot project, rapid border intervention or migration management support team deployment, the Agency and the host Member State shall determine in a transparent manner the responsibilities for compliance with the data protection obligations. When the purpose and the means of processing are jointly determined by the Agency and the host Member State, they shall be joint controllers by means of concluding an arrangement between them.*

For the purposes referred to in points (a), (b), (c), (e) and (f) of Article 87(1), the Agency shall only process the following categories of personal data collected █ by the Member States, by members of the teams, by its staff or by EASO that have been transmitted to it in the context of joint operations, return operations, return interventions, pilot projects, rapid border interventions, and migration management support team deployments:

█

- (a) the personal data of persons who cross the external borders without authorisation █ ;
- (b) *personal data that are necessary to confirm the identity and nationality of third-country nationals within the framework of the return activities, including passenger lists;*
- (c) license plate numbers, vehicle identification numbers, telephone numbers or ship *and aircraft* identification numbers which are linked to the persons referred to in point (a) █ , and which are necessary for █ analysing routes and methods used for illegal immigration █ .

2. The personal data referred to in paragraph 1 may be processed by the Agency in the following cases:

(a) where the transmission of those data to the authorities of the relevant Member States which are responsible for border control, migration, asylum or returns, *or to relevant Union bodies, offices and agencies*, is necessary for those authorities or Union bodies, offices and agencies to fulfil their tasks in accordance with Union and national law;

(b) where transmission of those data to the authorities of relevant Member States, *relevant Union bodies, offices and agencies*, third countries of return or international organisations is necessary for the purpose of identifying third-country nationals, acquiring travel documents or enabling or supporting return;

(c) where necessary for the preparation of risk analyses.

■

Article 89

Processing of personal data in the framework of EUROSUR

1. Where the national situational picture requires the processing of personal data, those data shall be processed in accordance with **Regulation (EU) 2016/679 and, where applicable, Directive (EU) 2016/680**. Each Member State shall designate the authority which is to be considered as controller within the meaning of point 7 of Article 4 of Regulation (EU) 2016/679 **or point (8) of Article 3 of Directive 2016/680, as applicable**, and which shall have central responsibility for the processing of **personal** data by that Member State. Each Member State shall notify the details of that authority to the Commission.
2. Ship and aircraft identification numbers shall be the only personal data that **are permitted to be accessed** in the European situational and specific situational pictures **and the EUROSUR fusion services**.

3. *Where the processing of information in EUROSUR exceptionally requires the processing of personal data other than ship and aircraft identification numbers, any such processing shall be strictly limited to what is necessary for the purposes of EUROSUR in accordance with Article 18.*

4. Any exchange of personal data with third countries in the framework of EUROSUR shall be strictly limited to what is absolutely necessary for the purposes of this Regulation. It shall be carried out in accordance with *Chapter V of Regulation (EU) 2018/1725 by the Agency, and in accordance with Chapter V of Regulation (EU) 2016/679, with Chapter V of Directive (EU) 2016/680, as applicable, and with* the relevant national provisions on data protection transposing that Directive, *by the Member States.*

5. Any exchange of information under Articles 72(2), 73(3) and 74(3) which provides a third country with *data* that could be used to identify persons or groups of persons whose request for access to international protection is under examination or who are under a serious risk of being subjected to torture, inhuman and degrading treatment or punishment, or any other violation of fundamental rights, shall be prohibited.

6. *Member States and the Agency shall keep records of processing activities in accordance with, Article 30 of Regulation (EU) 2016/679, Article 24 of Directive (EU) 2016/680, and Article 31 of Regulation (EU) 2018/1725, as applicable.*

█

Article 90

Processing of operational personal data

1. Where the Agency, in the performance of its tasks under point (q) of Article 10(1) of this Regulation, processes personal data which it has collected while monitoring migratory flows, carrying out risk analyses or in the course of operations for the purpose of identifying suspects of cross-border crime, it shall process such personal data in accordance with Chapter IX of Regulation (EU) 2018/1725. Personal data processed for that purpose, including license plate numbers, vehicle identification numbers, telephone numbers and ship or aircraft identification numbers which are linked to such persons, shall relate to natural persons whom the competent authorities of the Member States, Europol, Eurojust, or the Agency have reasonable grounds to suspect are involved in cross-border crime. Such personal data may include personal data of victims or witnesses where those personal data supplement the personal data of suspects processed by the Agency in accordance with this Article.

2. The Agency shall only exchange personal data as referred to in paragraph 1 of this Article with:

(a) Europol or Eurojust where they are strictly necessary for the performance of their respective mandates and in accordance with Article 68;

(b) the competent law enforcement authorities of the Member States where they are strictly necessary for those authorities for the purposes of preventing, detecting, investigating or prosecuting serious cross-border crime.

Article 91

Data retention

1. The Agency shall delete personal data as soon as they have been transmitted to the competent authorities of Member States, other Union bodies, offices and agencies, in particular EASO, or transferred to third countries or international organisations or used for the preparation of risk analyses. The retention period shall, in any event, not exceed 90 days after the date of the collection of those data. Data shall be anonymised in the results of risk analyses.

2. Personal data processed for the purpose of performing return-related tasks shall be deleted as soon as the purpose for which they have been collected has been achieved, and shall be deleted no later than 30 days after the end of those tasks.

3. Operational personal data processed for the purposes of Article 90 shall be deleted as soon as the purpose for which they have been collected has been achieved by the Agency. The Agency shall continuously review the necessity of storing such data, in particular the personal data of victims and witnesses. In any case, the Agency shall review the necessity of storing such data no later than three months after the start of initial processing of such data, and every six months thereafter. The Agency shall decide on the continued storage of personal data, in particular the personal data of victims and witnesses, until the following review, only if such storage is still necessary for the performance of the Agency's tasks under Article 90.

4. This Article does not apply to personal data collected in the context of the FADO system.

Article 92

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

1. The Agency shall adopt its own security rules that shall be based on the principles and rules laid down in *the* Commission's security rules for protecting European Union classified information (EUCI) and sensitive non-classified information including, *inter alia*, provisions for the exchange of such information with third countries, and processing and storage of such information as set out in Commission Decisions (EU, Euratom) 2015/443⁴⁴ and (EU, Euratom) 2015/444⁴⁵. Any administrative arrangement on the exchange of classified information with the relevant authorities of a third country or, in the absence of such arrangement, any exceptional ad hoc release of EUCI to those authorities, shall be subject to the Commission's prior approval.

⁴⁴ Commission Decision (EU, Euratom) 2015/443 of 13 March 2015 on Security in the Commission (OJ L 72, 17.3.2015, p. 41).

⁴⁵ 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).

2. The management board shall adopt the Agency's security rules following approval by the Commission. When assessing the proposed security rules, the Commission shall ***ensure that they are compatible with Decisions (EU, Euratom) 2015/443 and (EU, Euratom) 2015/444.***

3. Classification shall not preclude information being made available to the European Parliament. The transmission and handling of information and documents transmitted to the European Parliament in accordance with this Regulation shall ***comply with the rules concerning the forwarding and handling of classified information which are applicable between the European Parliament and the Commission.***

SECTION 3

GENERAL FRAMEWORK AND ORGANISATION OF THE AGENCY

Article 93

Legal status and location

1. The Agency shall be a body of the Union. It shall have legal personality.
2. In each of the Member States, the Agency shall enjoy the most extensive legal capacity accorded to legal persons under their laws. It may, in particular, acquire or dispose of movable and immovable property and may be party to legal proceedings.
3. The Agency shall be independent in implementing its technical and operational mandate.
4. The Agency shall be represented by its executive director.
5. The seat of the Agency shall be Warsaw, Poland.

Article 94

Headquarters agreement

1. The necessary arrangements concerning the accommodation to be provided for the Agency in the Member State in which the Agency has its seat and the facilities to be made available by that Member State, as well as the specific rules applicable to the executive director, the deputy executive directors, the members of the management board, Agency staff and members of their families in that Member State shall be laid down in a headquarters agreement between the Agency and the Member State in which the Agency has its seat.
2. The headquarters agreement shall be concluded after obtaining the approval of the management board.
3. The Member State in which the Agency has its seat shall provide the best possible conditions to ensure the proper functioning of the Agency, including multilingual, European-oriented schooling and appropriate transport connections.

Article 95

Staff

1. The Staff Regulations , the Conditions of Employment and the rules adopted in agreement between the institutions of the Union for giving effect to those Staff Regulations and those Conditions of Employment shall apply to statutory staff.
2. The place of employment shall in principle be the Member State where the Agency's seat is located.

3. Statutory staff who are subject to the Conditions of Employment shall in principle be engaged initially for a fixed period of five years. Their contracts may in principle be renewed only once, for a fixed period of a maximum of five years. Any further renewal shall be for an indefinite period.

■

4. For the purpose of implementing Articles 31 *and* 44 ■ , only statutory staff who are subject to the Staff Regulations or to Title II of the Conditions of Employment may be appointed as liaison officers or coordinating officers. For the purpose of implementing Article 55, only statutory staff who are subject to the Staff Regulations or of the Conditions of Employment may be deployed as members of the teams.

5. The management board shall adopt implementing rules for giving effect to the Staff Regulations and Conditions of Employment in agreement with the Commission pursuant to Article 110(2) of the Staff Regulations.

6. Subject to prior approval by the Commission, the management board shall adopt rules related to staff from Member States to be seconded to the Agency in accordance with Article 56 and update them as necessary. ***Those rules shall include, in particular, the financial arrangements related to those secondments, including insurance, and training.*** Those rules shall take into account the fact that the staff are seconded to be deployed as members of the teams and are to have the tasks and powers provided for in Article 82. Such rules shall include provisions on the conditions of deployment. Where relevant, the management board shall aim to ensure consistency with the rules applicable to reimbursement of the mission expenses of the statutory staff.

Article 96

Privileges and immunities

Protocol No 7 on the Privileges and Immunities of the European Union annexed to the Treaty on European Union (TEU) and to the TFEU shall apply to the Agency and its statutory staff.

Article 97

Liability

- 1. *Without prejudice to Articles 84 and 85, the Agency shall be liable for any activities it has undertaken in accordance with this Regulation.***
2. The contractual liability of the Agency shall be governed by the law applicable to the contract in question.
3. The Court of Justice shall have jurisdiction to give judgment pursuant to any arbitration clause contained in a contract concluded by the Agency.

4. 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, *including those related to the use of executive powers*.
5. The Court of Justice shall have jurisdiction in disputes relating to compensation for the damage referred to in paragraph 4.
6. The personal liability of statutory staff towards the Agency shall be governed by the provisions laid down in the Staff Regulations and Conditions of Employment applicable to them.

Article 98

Actions before the Court of Justice

- 1. Proceedings may be brought before the Court of Justice for the annulment of acts of the Agency that are intended to produce legal effects vis-à-vis third parties, in accordance with Article 263 TFEU, and for failure to act, in accordance with Article 265 TFEU, for non-contractual liability for damages caused by the Agency and, pursuant to an arbitration clause, contractual liability for damages caused by acts of the Agency, in accordance with Article 340 TFEU.*
- 2. The Agency shall take the necessary measures to comply with judgments of the Court of Justice.*

Article 99

Administrative and management structure of the Agency

The administrative and management structure of the Agency shall include:

- (a) a management board;
- (b) an executive director;
- (c) deputy executive directors; and
- (d) a fundamental rights officer;

A consultative forum shall assist the Agency *as an advisory body*.

Article 100

Functions of the management board

1. The management board shall be responsible for taking the strategic decisions of the Agency in accordance with this Regulation.
2. The management board shall:
 - (a) appoint the executive director on the basis of a proposal from the Commission in accordance with Article 107;
 - (b) appoint the deputy executive directors on the basis of a proposal from the Commission in accordance with Article 107;
 - (c) adopt decisions on establishing antenna offices or prolonging the duration of their operation in accordance with Article 60(5) by a majority of two thirds of the members with a right to vote;
 - (d) adopt decisions on conducting the vulnerability assessment in accordance with Article 32(1) and (10), with the decisions setting out measures adopted under Article 32(10) being passed by a majority of two thirds of the members with a right to vote;

- (e) adopt decisions on the lists of mandatory information and data to be exchanged with the Agency by the national authorities responsible for border management, including coast guards to the extent that they carry out border control tasks, as well as the national authorities responsible for returns, to enable the Agency to perform its tasks, ***without prejudice to obligations established by this Regulation, in particular by Articles 49 and 86 to 89***;
- (f) adopt decisions on the establishment of a common integrated risk analysis model in accordance with Article 29(1);
- (g) adopt decisions on the nature and terms of the deployment of liaison officers in Member States in accordance with Article 31(2);
- (h) adopt a technical and operational strategy for European integrated border management in accordance with Article 8(5);

- (i) adopt decisions on the profiles and the numbers of operational staff for the management of borders and migration within the standing corps, in accordance with Article 54(4);
- (j) adopt the Agency's annual activity report for the previous year and transmit it, by 1 July of each year at the latest, to the European Parliament, to the Council, to the Commission and to the Court of Auditors;
- (k) before 30 November of each year, and after duly taking into account the opinion of the Commission, adopt, by a majority of two thirds of the members with a right to vote, a single programming document containing, *inter alia*, the Agency's multiannual programming and its work programme for the following year and forward it to the European Parliament, to the Council and to the Commission;
- (l) establish procedures for the executive director to take decisions relating to the technical and operational tasks of the Agency;

- (m) adopt, by a majority of two thirds of the members with a right to vote, the annual budget of the Agency and exercise other functions in respect of the Agency's budget pursuant to Section 4 of this Chapter;
- (n) exercise disciplinary authority over the executive director and, in *consultation* with the executive director, over the deputy executive directors;
- (o) establish its rules of procedure;
- (p) establish the organisational structure of the Agency and adopt the Agency's staff policy;
- (q) adopt an anti-fraud strategy that is proportionate to the risk of fraud, taking into account the costs and benefits of the measures to be implemented;

- (r) adopt internal rules for the prevention and management of conflicts of interest in respect of its members;
- (s) exercise, in accordance with paragraph 8, with respect to statutory staff, the powers conferred by the Staff Regulations on the Appointing Authority and by the Conditions of Employment on the Authority Empowered to Conclude a Contract of Employment ('the Appointing Authority powers');
- (t) adopt implementing rules for giving effect to the Staff Regulations and the Conditions of Employment in accordance with Article 110(2) of the Staff Regulations;
- (u) 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);

- (v) adopt and regularly update the communication and dissemination plans referred to in the second subparagraph of Article 10(2);
- (w) appoint an accounting officer, subject to the Staff Regulations and the Conditions of Employment, who shall be completely independent in the performance of his or her duties;
- (x) decide on a common vulnerability assessment methodology, including the objective criteria against which the Agency shall carry out the vulnerability assessment, the frequency of such assessments and how consecutive vulnerability assessments are to be carried out;
- (y) decide on enhanced assessment and monitoring of a Member State as referred to in Article 32(2);
- (z) appoint the fundamental rights officer *and a deputy fundamental rights officer* in accordance with Article 109 **■** ;

- (aa) establish special rules in order to guarantee the independence of the fundamental rights officer in the performance of his or her duties;***
- (ab) approve the working arrangements with third countries;
- (ac) subject to the prior approval of the Commission, adopt the security rules of the Agency on protecting EUCI and sensitive non-classified information as ***referred*** to in Article 92;
- (ad) appoint a security officer, subject to the Staff Regulations and the Conditions of Employment, who shall be responsible for the security within the Agency, including for the protection of classified information and sensitive non-classified information;
- (ae) decide on any other matter where provided for in this Regulation.***

The annual activity report referred to in point (j) shall be made public.

3. Proposals for decisions of the management board, as referred to in paragraph 2, on specific activities of the Agency to be carried out at, or in the immediate vicinity of, the external borders of any particular Member State *or on working arrangements with third countries as referred to in Article 73(4)* shall require a vote in favour of their adoption by the member of the management board representing that *particular* Member State *or the Member State neighbouring that third country, respectively*.

4. The management board may advise the executive director on any matter related to the development of operational management of the external borders *and training*, including activities related to research.

5. Should Ireland or the United Kingdom request to participate in specific activities, the management board shall decide thereon.

The management board shall take its decisions on a case-by-case basis. In its decisions, the management board shall consider whether the participation of Ireland or the United Kingdom contributes to the achievement of the activity in question. The decisions shall set out the financial contribution of Ireland or the United Kingdom to the activity for which the request for participation has been made.

6. The management board shall forward annually to the European Parliament and to the Council ('the budgetary authority') any information relevant to the outcome of the evaluation procedures conducted by the Agency.

7. The management board may establish an executive board composed of up to four representatives of the management board, including its chairperson, and a representative of the Commission, to assist it and the executive director with regard to the preparation of the decisions, programmes and activities to be adopted by the management board and to take certain provisional, urgent decisions on behalf of the management board when necessary. The executive board shall not take decisions that must be passed by a majority of two thirds of the management board. The management board may delegate certain clearly defined tasks to the executive board, in particular where this improves the efficiency of the Agency. It may not delegate to the executive board tasks related to decisions that must be passed by a majority of two thirds of the management board.

8. 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, delegating relevant appointing-authority powers to the executive director and setting out 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. It may then exercise them itself or delegate them to one of its members or to a statutory staff member other than the executive director.

Article 101

Composition of the management board

1. Without prejudice to paragraph 3, the management board shall be composed of one representative of each Member State and two representatives of the Commission, each with a right to vote. To this effect, each Member State shall appoint a member of the management board as well as an alternate who will represent the member in his or her absence. The Commission shall appoint two members and two alternates. The duration of the terms of office shall be four years. The terms of office shall be extendable.
2. The management board members shall be appointed on the basis of the degree of their relevant high-level experience, their expertise in the field of operational cooperation on border management and returns, and their relevant managerial, administrative and budgetary skills. Member States and the Commission shall aim to achieve a gender balanced representation on the management board.

3. Countries associated with the implementation, application and development of the Schengen *acquis* shall participate in the Agency. They shall each have one representative and one alternate on the management board. The arrangements developed under the relevant provisions of their association agreements that specify the nature and extent of, and the detailed rules for, the participation by those countries in the work of the Agency, including provisions on financial contributions and staff, shall apply.

Article 102

Multiannual programming and annual work programmes

1. The management board shall, by 30 November of each year, adopt a single programming document containing, *inter alia*, the Agency's multiannual programming and annual programming for the following year, on the basis of a draft put forward by the executive director and endorsed by the management board. The single programming document shall be adopted taking into account a positive opinion of the Commission and, as regards the multiannual programming, after having consulted the European Parliament ***and the Council***. If the management board decides not to take into account elements of the opinion of the Commission, it shall provide a thorough justification. ***The obligation to provide a thorough justification shall also apply to the elements raised by the European Parliament and the Council during the consultation.*** The management board shall forward the document to the European Parliament, to the Council and to the Commission ***without delay***.

2. The document referred to in paragraph 1 shall become definitive after the final adoption of the general budget. It shall be adjusted accordingly where necessary.

3. ***In line with the multiannual strategic policy cycle for European integrated border management, the*** multiannual programming shall set out overall strategic programming for the medium and long term, which shall include objectives, expected results, performance indicators and resource planning, including the multiannual budget, staff and the development of the Agency's own capabilities, ***including indicative multiannual planning of the profiles of staff for the standing corps***. The multiannual programming shall set out the strategic areas of intervention and what needs to be done to achieve the objectives. It shall include ***strategic actions for the implementation of the fundamental rights strategy referred to in Article 80(1) and*** a strategy for relations with third countries and international organisations as well as the actions linked to that strategy.

4. The multiannual programming shall be implemented by means of annual work programmes and shall, where appropriate, be updated following the outcome of an evaluation conducted pursuant to Article 121. The conclusion of those evaluations shall also be reflected, where appropriate, in the annual work programme for the following year.

5. The annual work programme shall contain a description of the activities to be financed, comprising detailed objectives and expected results, including performance indicators. It shall also contain an indication of the financial and human resources allocated to each activity, in accordance with the principles of activity-based budgeting and management. The annual work programme shall be consistent with the multiannual programming. It shall clearly indicate tasks that have been added, changed or deleted compared with the previous financial year.

6. The annual work programme shall be adopted in accordance with the Union legislative programme in relevant areas of the management of the external borders and returns.
7. Where, after adoption of an annual work programme, a new task is assigned to the Agency, the management board shall amend the annual work programme.
8. Any substantial amendment to the annual work programme, especially a modification resulting in a reallocation of the budgetary resources above 2 % of the annual budget, shall be adopted by the same procedure as that applicable to adoption of the initial annual work programme. The management board may delegate to the executive director the power to make non-substantial amendments to the annual work programme.

Article 103

Chair of the management board

1. The management board shall elect a chairperson and a deputy chairperson from among its members with a right to vote. The chairperson and the deputy chairperson shall be elected by a majority of two thirds of the members of the management board with a right to vote. The deputy chairperson shall *ex officio* replace the chairperson in the event of his or her being prevented from attending to his or her duties.
2. The terms of office of the chairperson and deputy chairperson shall expire when their respective membership of the management board ceases. Subject to this provision, the terms of office of the chairperson or deputy chairperson shall be four years. Those terms of office shall be extendable once.

Article 104

Meetings of the management board

1. Meetings of the management board shall be convened by its chairperson.
2. The executive director shall take part in the deliberations without the right to vote.
3. The management board shall hold at least two ordinary meetings a year. In addition, it shall meet at the initiative of the chairperson, at the request of the Commission, or at the request of at least one third of the members of the management board. Where necessary, the management board may hold joint meetings with the management boards of *EASO* and Europol.
4. Ireland shall be invited to attend the meetings of the management board.
5. The United Kingdom shall be invited to attend meetings of the management board that take place before the day on which the Treaties cease to apply to the United Kingdom pursuant to Article 50(3) TEU.

6. Representatives of EASO and Europol shall be invited to attend the meetings of the management board. ***A representative of FRA shall be invited to attend meetings of the management board where points relevant to the protection of fundamental rights are on the agenda.***

7. ***The chairperson of the management board may also invite an expert of the European Parliament to attend the meetings of the management board.*** The management board may also invite representatives of ***other*** relevant Union institutions, bodies, offices and agencies. The management board may invite, in accordance with its rules of procedure, any other person whose opinion may be of interest to attend its meetings as an observer.

8. The members of the management board may, subject to the provisions of its rules of procedure, be assisted by advisers or experts.

9. The secretariat for the management board shall be provided by the Agency.

Article 105

Voting

1. Without prejudice to, points (c), (d), (k) and (m) of Article 100(2), Article 103(1), and Article 107(2) and (4), the management board shall take its decisions by an absolute majority of its members with a right to vote.

2. Each member shall have one vote. In the absence of a member, his or her alternate shall be entitled to exercise his or her right to vote. The executive director shall not vote.

3. The rules of procedure shall set out the voting arrangements in greater detail. Those rules shall include the conditions for a member to act on behalf of another member as well as any quorum requirements.

4. Representatives of countries associated with the implementation, application and development of the Schengen *acquis* shall have limited voting rights corresponding to their respective arrangements. In order to allow the associated countries to exercise their right to vote, the Agency shall detail the agenda identifying the points for which a limited voting right has been granted.

Article 106

Functions and powers of the executive director

1. The Agency shall be managed by its executive director, who shall be completely independent in the performance of his or her duties. Without prejudice to the respective competencies of the Union institutions and the management board, the executive director shall neither seek nor take instructions from any government or from any other body.

2. The European Parliament or the Council may invite the executive director to report on the carrying out of his or her tasks. This includes reporting ***on the activities of the Agency***, the implementation and monitoring of the fundamental rights strategy, the annual activity report of the Agency for the previous year, the work programme for the following year and the Agency's multiannual programming and any other matter related to the activities of the Agency. The executive director shall also make a statement before the European Parliament, if requested, and ***shall answer in writing any question put forward by a Member of the European Parliament within 15 calendar days from receipt of such question. The executive director shall*** report regularly ***to the appropriate bodies and committees of the European Parliament.***

3. ***Except where specific deadlines are provided for in this Regulation, the executive director shall ensure that reports are transmitted to the European Parliament, to the Council and to the Commission as soon as possible, and in any event within six months of the end of the reporting period, unless the executive director duly justifies a delay in writing.***

4. The executive director shall be responsible for the preparation and implementation of the strategic decisions taken by the management board and for the taking of decisions related to the operational activities of the Agency in accordance with this Regulation. The executive director shall have the following functions and powers:

(a) to propose, prepare and implement the strategic decisions and programmes and activities adopted by the management board within the limits set out in this Regulation, its implementing rules and any applicable law;

(b) to take all necessary steps, including the adoption of internal administrative instructions and the publication of notices, to ensure the day-to-day administration and functioning of the Agency in accordance with this Regulation;

- (c) to prepare each year the draft single programming document and to submit it to the management board for endorsement before that draft is sent to the European Parliament, to the Council and to the Commission by 31 January;
- (d) to prepare each year the annual activity report on the Agency's activities and submit it to the management board;
- (e) to draw up a draft statement of estimates of the revenues and expenditure of the Agency as part of the single programming document pursuant to Article 115(3), and implement the budget pursuant to Article 116(1);
- (f) to delegate his or her powers to other statutory staff members subject to rules to be adopted in accordance with point (o) of Article 100(2);

- (g) to adopt a recommendation on measures in accordance with Article 32(7), including decisions proposing that Member States initiate and carry out joint operations, rapid border interventions or other actions referred to in Article 36(2);
- (h) to evaluate, approve and coordinate proposals made by Member States for joint operations or rapid border interventions in accordance with Article 37(3);
- (i) to evaluate, approve and coordinate requests made by Member States for return operations and return interventions in accordance with Articles 50 and 53;
- (j) to ensure the implementation of the operational plans referred to in Article 38, Article 42 and Article 53(3);

- (k) to ensure the implementation of the *Council* decision referred to in Article 42(1);
- (l) to withdraw financing of activities in accordance with Article 46;
- (m) to assess, prior to any operational activity of the Agency, whether there are violations of fundamental rights or international protection obligations that are of a serious nature or are likely to persist in accordance with Article 46(4) and (5);*
- (n) to evaluate the results of activities in accordance with Article 47;

- (o) to identify the minimum number of items of technical equipment required to meet the Agency's needs, in particular as regards carrying out joint operations, migration management support team deployments, rapid border interventions, return operations and return interventions, in accordance with Article 64(6);
- (p) to propose the establishment of antenna offices or the prolongation of the duration of their operation in accordance with Article 60(5);
- (q) to appoint the heads of the antenna offices in accordance with Article 60(4);
- (r) to prepare an action plan following up on the conclusions of internal or external audit reports and evaluations, as well as on investigations by OLAF, and to report on progress to the Commission twice a year and to the management board on a regular basis;

(s) to protect the financial interests of the Union by applying preventive measures against fraud, corruption and any other illegal activities by means of effective checks and, if irregularities are detected, by recovering amounts that were wrongly paid and, where appropriate, imposing effective, proportionate and dissuasive administrative and financial penalties;

(t) to prepare an anti-fraud strategy for the Agency and present it to the management board for approval.

5. The executive director shall be accountable for his or her activities to the management board.

6. The executive director shall be the legal representative of the Agency.

Article 107

Appointment of the executive director and the deputy executive directors

1. The Commission shall propose at least three candidates for the post of executive director and for the posts of each of the deputy executive directors on the basis of a list, following the publication of the post in the *Official Journal of the European Union* and, as appropriate, other press or internet sites.
2. On the basis of a proposal from the Commission, as provided for in paragraph 1, the management board shall appoint the executive director on the grounds of merit and documented high-level administrative and management skills, including relevant senior professional experience in the field of management of the external borders and return. Before appointment, the candidates proposed by the Commission shall be invited to make a statement before the competent committee or committees of the European Parliament and answer questions put by its or their members.

Following such statements, the European Parliament shall adopt an opinion setting out its views and may indicate a preferred candidate.

The management board shall appoint the executive director taking those views into account. The management board shall take its decision by a majority of two thirds of the members with a right to vote.

If the management board takes a decision to appoint a candidate other than the candidate whom the European Parliament indicated as its preferred candidate, the management board shall inform the European Parliament and the Council in writing of the manner in which the opinion of the European Parliament was taken into account.

The power to dismiss the executive director shall lie with the management board, acting on a proposal from the Commission.

3. The executive director shall be assisted by three deputy executive directors. Each deputy executive director shall be assigned a specific area of responsibility. If the executive director is absent or indisposed, one of the deputy executive directors shall take his or her place.

4. On the basis of a proposal from the Commission, as provided for in paragraph 1, the management board shall appoint the deputy executive directors on the grounds of merit and appropriate administrative and management skills, including relevant professional experience in the field of management of the external borders and return **■**. ***The executive director shall be involved in the selection process.*** The management board shall take its decision by a majority of two thirds of the members with a right to vote.

The management board shall have the power to dismiss the deputy executive directors in accordance with the procedure set out in the first subparagraph.

5. The term of office of the executive director shall be five years. By the end of that period, the Commission shall undertake an assessment that takes into account an evaluation of the executive director's performance and the Agency's future tasks and challenges.

6. The management board, acting on a proposal from the Commission that takes into account the assessment referred to in paragraph 5, may extend the term of office of the executive director once for another period of up to five years.

7. The term of office of the deputy executive directors shall be five years. The management board, acting on a proposal from the Commission, may extend that term once for another period of up to five years.

8. The executive director and the deputy executive directors shall be engaged as temporary agents of the Agency under point (a) of Article 2 of the Conditions of Employment.

Article 108

Consultative forum

1. A consultative forum shall be established by the Agency to assist *it* by providing independent advice in fundamental rights matters. ***The executive director and the management board, in coordination with the fundamental rights officer, may consult the consultative forum on any matter related to fundamental rights.***
2. The Agency shall invite *EASO*, FRA, the United Nations High Commissioner for Refugees and other relevant organisations to participate in the consultative forum. On the basis of a proposal from the ***fundamental rights officer that was made after consulting the executive director***, the management board shall decide on the composition of the consultative forum and the terms of the transmission of information to the consultative forum. The consultative forum shall, after consulting the management board and the executive director, define its working methods and set up its work programme.

3. The consultative forum shall be consulted on the further development and implementation of the fundamental rights strategy, on the *functioning* of the complaints mechanism, on codes of conduct and on the common core curricula. ***The Agency shall inform the consultative forum of the follow-up to its recommendations.***
4. The consultative forum shall prepare an annual report of its activities. That report shall be made publicly available.
5. Without prejudice to the tasks of the fundamental rights officer, the consultative forum shall be provided with effective access ***in a timely and effective manner*** to all information concerning the respect for fundamental rights, including by carrying out on-the-spot visits to joint operations or rapid border interventions subject to the agreement of the host Member State ***or the third country, as applicable,*** to hotspot areas ***and to*** return operations and return interventions, ***including in third countries. Where the host Member State does not agree to an on-the-spot visit by the consultative forum to a joint operation or to a rapid border intervention carried out on its territory, it shall provide the Agency with duly justified reasons in writing.***

Article 109

Fundamental rights officer

1. A fundamental rights officer shall be appointed by the management board *on the basis of a list of three candidates, after consultation with the consultative forum.* ■ The fundamental rights officer shall have the necessary qualifications, *expert knowledge and professional* experience in the field of fundamental rights.

2. *The fundamental rights officer shall perform the following tasks:*

(a) *contributing to the Agency's fundamental rights strategy and the corresponding action plan, including by issuing recommendations for improving them;*

(b) *monitoring the Agency's compliance with fundamental rights, including by conducting investigations into any of its activities;*

- (c) promoting the Agency's respect of fundamental rights;*
- (d) advising the Agency where he or she deems it necessary or where requested on any activity of the Agency without delaying those activities;*
- (e) providing opinions on the operational plans drawn up for the operational activities of the Agency, on pilot projects and on technical assistance projects in third countries;*
- (f) providing opinions on working arrangements;*
- (g) carrying out on-the-spot visits to any joint operation, rapid border intervention, pilot project, migration management support team deployment, return operation or return intervention, including in third countries;*
- (h) providing the secretariat of the consultative forum;*

- (i) informing the executive director about possible violations of fundamental rights during activities of the Agency;*
- (j) selecting and managing the fundamental rights monitors;*
- (k) performing any other tasks, where provided for by this Regulation.*

The secretariat referred to in point (h) of the first subparagraph shall receive instructions directly from the consultative forum.

3. For the purposes of point (j) of the first subparagraph of paragraph 2, the fundamental rights officer shall, in particular:

- (a) appoint the fundamental rights monitors;*
- (b) assign fundamental rights monitors to operations and activities as provided for in Article 110(3);*

- (c) nominate fundamental rights monitors as forced-return monitors for the pool referred to in Article 51;*
- (d) ensure that fundamental rights monitors are adequately trained;*
- (e) report to the executive director on possible violations of fundamental rights reported to him or her by the fundamental rights monitors as the fundamental rights officer deems necessary;*

The executive director shall reply to the fundamental rights officer as to how concerns regarding possible violations of fundamental rights as referred to in point (e) of the first subparagraph have been addressed.

The fundamental rights officer may entrust any of the tasks provided for in points (a) to (i) and (k) of the first subparagraph of paragraph 2 to one of the fundamental rights monitors.

4. The management board shall lay down *special rules applicable to* the fundamental rights officer *in order to guarantee that the fundamental rights officer and his or her staff are* independent in the performance of their duties. The fundamental rights officer shall report directly to the management board and shall cooperate with the consultative forum. *The management board shall ensure that action is taken with regard to recommendations of the fundamental rights officer. In addition, the* fundamental rights officer shall *publish annual* reports on *his or her activities and on the extent to which the activities of the Agency respect* fundamental rights. *Those reports shall include information on the complaints mechanism and the implementation of the fundamental rights strategy.*

5. The Agency shall ensure that the fundamental rights officer is able to act autonomously and is able to be independent in the conduct of his or her duties. The fundamental rights officer shall have sufficient and adequate human and financial resources at his or her disposal necessary for the fulfilment of his or her tasks.

The fundamental rights officer shall select his or her staff, and that staff shall only report to him or her.

6. The fundamental rights officer shall be assisted by a deputy fundamental rights officer. The deputy fundamental rights officer shall be appointed by the management board from a list of at least three candidates presented by the fundamental rights officer. The deputy fundamental rights officer shall have the necessary qualifications and experience in the field of fundamental rights and shall be independent in the conduct of his or her duties. If the fundamental rights officer is absent or indisposed, the deputy fundamental rights officer shall assume the fundamental rights officer's duties and responsibilities.

7. █ The fundamental rights officer shall have access to all information concerning respect for fundamental rights in all the activities of the Agency.

Article 110

Fundamental rights monitors

1. Fundamental rights monitors, employed as statutory staff, shall constantly assess the fundamental rights compliance of operational activities, provide advice and assistance in that regard and contribute to the promotion of fundamental rights as part of European integrated border management.

2. Fundamental rights monitors shall have the following tasks:

(a) monitoring compliance with fundamental rights and providing advice and assistance on fundamental rights in the preparation, conduct and evaluation of the operational activities of the Agency which the fundamental rights officer has assigned to them to monitor;

(b) acting as forced-return monitors;

(c) contributing to the training activities of the Agency on fundamental rights as provided for in Article 62, including by providing training on fundamental rights.

For the purposes of point (a) of the first subparagraph, fundamental rights monitors shall, in particular:

(a) follow the preparation of operational plans and report to the fundamental rights officer to enable him or her to fulfil his or her tasks as provided for in point(e) of Article 109(2);

(b) conduct visits, including long-term visits, where operational activities take place;

(c) cooperate and liaise with the coordinating officer as provided for in Article 44 and provide advice and assistance to him or her;

(d) inform the coordinating officer and report to the fundamental rights officer on any concerns related to possible violation of fundamental rights within the Agency's operational activities; and

(e) contribute to the evaluation of activities as referred to in Article 47.

3. Without prejudice to paragraph 4, the fundamental rights officer shall assign at least one fundamental rights monitor to each operation. The fundamental rights officer may also decide to assign fundamental rights monitors to monitor any other operational activity he or she considers relevant.

Fundamental rights monitors shall have access to all areas in which the operational activity of the Agency takes place and to all its documents relevant for the implementation of that activity.

4. Fundamental rights monitors may be nominated by the fundamental rights officer as forced-return monitors for the pool referred to in Article 51. Where fundamental rights monitors act as forced-return monitors, Article 50(5) and Article 51 shall apply, mutatis mutandis.

5. The fundamental rights officer shall appoint the fundamental rights monitors and they shall be under his or her hierarchical supervision. Fundamental rights monitors shall be independent in the performance of their duties. When present in an operational area, fundamental rights monitors shall wear insignia that clearly allow for their identification as fundamental rights monitors.

6. The Agency shall ensure that by ... [one year following the entry into force of this Regulation] at least 40 fundamental rights monitors are recruited by the Agency. The executive director shall assess on an annual basis whether the number of fundamental rights monitors needs to be increased in consultation with the fundamental rights officer. Following that assessment, the executive director shall, where necessary, propose an increase in the number of fundamental rights monitors to the management board for the following year depending on operational needs.

7. Following their recruitment, fundamental rights monitors shall undergo enhanced fundamental rights training, taking into account previously acquired qualifications and professional experience in the relevant areas. Throughout their employment, the Agency shall ensure that fundamental rights monitors discharge their duties in accordance with the highest standards. Adequate training maps shall be designed for each fundamental rights monitor to ensure their continuous professional development to enable them to fulfil their role as fundamental rights monitors.

Article 111

Complaints mechanism

1. The Agency shall, in cooperation with the fundamental rights officer, take the necessary measures to set up ***and further develop an independent and effective*** complaints mechanism in accordance with this Article to monitor and ensure respect for fundamental rights in all the activities of the Agency.
2. Any person who is directly affected by the actions ***or failure to act on the part*** of staff involved in a joint operation, pilot project, rapid border intervention, migration management support team deployment, return operation, **■** return intervention ***or an operational activity of the Agency in a third country***, and who considers himself or herself to have been the subject of a breach of his or her fundamental rights due to those actions ***or that failure to act***, or any party representing such a person, may submit a complaint in writing to the Agency.

3. Only ***complaints that are*** substantiated ***and involve*** concrete fundamental rights violations shall be admissible.
4. The fundamental rights officer shall be responsible for handling complaints received by the Agency in accordance with the right to good administration. For that purpose, the fundamental rights officer shall review the admissibility of a complaint, register admissible complaints, forward all registered complaints to the executive director ***and forward*** complaints concerning members of the teams to the home Member State, ***including*** the relevant authority or body competent for fundamental rights in a Member State ***for further action in accordance with their mandate. The fundamental rights officer shall also*** register and ensure the follow-up by the Agency or that Member State.

5. In accordance with the right to good administration, if a complaint is admissible, complainants shall be informed that the complaint has been registered, that an assessment has been initiated and that a response may be expected as soon as it becomes available. If a complaint is forwarded to national authorities or bodies, the complainant shall be provided with their contact details. If a complaint is ***declared inadmissible***, the complainant shall be informed of the reasons and, if possible, provided with further options for addressing their concerns.

The Agency shall provide for an appropriate procedure in cases where a complaint is declared inadmissible or unfounded.

Any decision shall be in written form and reasoned. *The fundamental rights officer shall reassess the complaint if the complainant submits new evidence in situations where the complaint has been declared inadmissible or unfounded.*

6. In the case of a registered complaint concerning a staff member of the Agency, the *fundamental rights officer* shall *recommend* appropriate follow-up, including disciplinary measures, *to the executive director and, where appropriate, referral for the initiation of civil or criminal justice proceedings in accordance with this Regulation and national law*. The executive director shall *ensure the appropriate follow-up and* shall report back *to the fundamental rights officer* within a determined timeframe *and, if necessary, at regular intervals thereafter*, as to the findings, the implementation of disciplinary measures, and follow-up by the Agency in response to a complaint.

If a complaint is related to data protection issues, the executive director shall *consult the* data protection officer of the Agency *before taking a decision on the complaint*. The fundamental rights officer and the data protection officer shall establish, in writing, a memorandum of understanding specifying their division of tasks and cooperation as regards complaints received.

7. *In the case of a registered complaint concerning a* member of the teams from a host Member State or ■ from another participating Member State, including a seconded member of the teams or seconded national expert, the home Member State shall ensure appropriate follow-up, including disciplinary measures, *referral for the initiation of civil or criminal justice proceedings* as necessary, and other measures in accordance with national law. The relevant Member State shall report back to the fundamental rights officer within a determined time period as to the findings and follow-up *to the* complaint, and, if necessary, at regular intervals thereafter. The Agency shall follow up on the matter if no report is received from the relevant Member State.

Where the relevant Member State, within the determined time period, does not report back or provides only an inconclusive response, the fundamental rights officer shall inform the executive director and the management board.

8. Where a member of the teams is found to have violated fundamental rights or international protection obligations, the Agency *shall* request that the Member State remove that member immediately from the activity of the Agency or the standing corps.

9. ***The*** fundamental rights officer shall ***include information on the complaints mechanism in his or her annual*** report, as referred to in Article 109(4), ***including specific references*** to the Agency's and Member States' findings and the ***follow-up*** to complaints. ■

10. The fundamental rights officer shall, in accordance with paragraphs 1 to 9 and after consulting the consultative forum, draw up a standardised complaint form requiring detailed and specific information concerning the alleged breach of fundamental rights. The fundamental rights officer shall also draw up any further detailed rules as necessary. The fundamental rights officer shall submit that form and such further detailed rules to the executive director and to the management board.

The Agency shall ensure that information about the possibility and procedure for making a complaint is readily available, including for vulnerable persons. The standardised complaint form shall be made available on the Agency's website and in hardcopy during all activities of the Agency in languages that third-country nationals understand or are reasonably believed to understand. The standardised complaint form shall *be easily accessible, including on mobile devices. The Agency shall ensure that further guidance and assistance on the complaints procedure is provided to complainants.* Complaints shall be considered by the fundamental rights officer even when they have not been submitted in the standardised complaint form.

11. Any personal data contained in a complaint shall be handled and processed by the Agency, including the fundamental rights officer, in accordance with **Regulation (EU) 2018/1725** and by Member States in accordance with Regulation (EU) 2016/679 and Directive (EU) 2016/680.

Where a complainant submits a complaint, that complainant shall be understood to consent to the processing of his or her personal data by the Agency and the fundamental rights officer within the meaning of point (d) of Article 5(1) of *Regulation (EU) 2018/1725*.

In order to safeguard the interests of the complainants, complaints shall be dealt with confidentially by the fundamental rights officer in accordance with national and Union law unless the complainant explicitly waives his or her right to confidentiality. When complainants waive their right to confidentiality, it shall be understood that they consent to the fundamental rights officer or the Agency disclosing their identity to the competent authorities or bodies in relation to the matter under complaint, where necessary.

Article 112

Interparliamentary cooperation

- 1. In order to address the specific nature of the European Border and Coast Guard, in that it is composed of national authorities and the Agency, and to ensure that the scrutiny functions of the European Parliament over the Agency and of the national parliaments over their respective national authorities are effectively exercised, as provided for in the Treaties and by national law respectively, the European Parliament and the national parliaments may cooperate in the framework of Article 9 of Protocol No 1 on the Role of National Parliaments in the European Union annexed to the TEU and to the TFEU.*
- 2. When invited by the European Parliament and the national parliaments meeting within the context of paragraph 1, the executive director and the chairperson of the management board shall attend such meetings.*
- 3. The Agency shall transmit its annual activity report to the national parliaments.*

Article 113

Language arrangements

1. Regulation No 1⁴⁶ shall apply to the Agency.
2. Without prejudice to decisions taken on the basis of Article 342 TFEU, the annual activity report and the work programme shall be produced in all official languages of the Union.
3. The translation services required for the functioning of the Agency shall be provided by the Translation Centre for the Bodies of the European Union.

⁴⁶ Regulation No 1 of 15 April 1958 determining the languages to be used by the European Economic Community (OJ 17, 6.10.1958, p. 385).

Article 114

Transparency and communication

1. The Agency shall be subject to Regulation (EC) No 1049/2001 when handling applications for access to documents held by it.
2. The Agency shall communicate on matters falling within the scope of its tasks on its own initiative. It shall make public relevant information, including the annual activity report, *the annual work programme, the code of conduct, strategic risk analyses, and comprehensive information on past and current joint operations, rapid border interventions, pilot projects, technical assistance projects with third countries, migration management support team deployments, return operations or return interventions, including in third countries, and working arrangements*, and shall ensure, without prejudice to Article 92, in particular that the public and any interested party are rapidly given objective, *detailed*, comprehensive, reliable and easily understandable information with regard to its work. It shall do so without revealing operational information which, if made public, would jeopardise attainment of the objectives of operations.

3. The management board shall lay down the practical arrangements for the application of paragraphs 1 and 2.
4. Any natural or legal person shall be entitled to address written correspondence to the Agency in any of the official languages of the Union. He or she shall have the right to receive an answer in the same language.
5. Decisions taken by the Agency pursuant to Article 8 of Regulation (EC) No 1049/2001 may give rise to a complaint being lodged with the European Ombudsman or to an action before the Court of Justice, under the conditions laid down in Articles 228 and 263 TFEU respectively.

SECTION 4
FINANCIAL REQUIREMENTS

Article 115

Budget

1. The revenue of the Agency shall consist, without prejudice to other types of income, of:
 - (a) a contribution from the Union entered in the general budget of the European Union (Commission section);
 - (b) a contribution from the countries associated with the implementation, application and development of the Schengen *acquis*, as established in the respective arrangements that specify their financial contribution;
 - (c) Union funding in the form of contribution agreements or *ad-hoc* grants in accordance with the Agency's financial rules referred to in Article 120 and with the provisions of the relevant instruments supporting the policies of the Union;

- (d) fees for services provided;
 - (e) any voluntary contribution from the Member States.
2. The expenditure of the Agency shall include its administrative, infrastructure, operational and staff-related expenses.
 3. The executive director shall draw up a draft statement of estimates of the Agency's revenue and expenditure for the following financial year, including an establishment plan, and shall forward it to the management board.
 4. Revenue and expenditure shall be balanced.

5. The management board shall, on the basis of the draft statement of estimates drawn up by the executive director, adopt a provisional draft estimate of the Agency's revenue and expenditure, including the provisional establishment plan. The management board shall forward them to the European Parliament, to the Council and to the Commission by 31 January every year, as part of the draft single programming document.

6. The management board shall send the final draft estimates of the Agency's revenue and expenditure including the draft establishment plan accompanied by the preliminary work programme to the Commission by 31 March every year.

7. The estimate shall be forwarded by the Commission to the budgetary authority together with the draft general budget of the European Union.
8. On the basis of the estimate, the Commission shall enter in the draft general budget of the European Union the estimates it deems necessary for the establishment plan and the amount of the contribution to be charged to the general budget, which it shall place before the budgetary authority in accordance with Articles 313 and 314 TFEU.
9. The budgetary authority shall authorise appropriations for the contribution to the Agency.

10. The budgetary authority shall adopt the establishment plan for the Agency.
11. The management board shall adopt the Agency's budget. It shall become final following final adoption of the general budget of the European Union. Where appropriate, it shall be adjusted accordingly.
12. Any modification to the budget, including the establishment plan, shall follow the same procedure.
13. For any building project likely to have significant implications for the budget of the Agency, the provisions of Commission Delegated Regulation (EU) 2019/715⁴⁷ shall apply.

⁴⁷ Commission Delegated Regulation (EU) 2019/715 of 18 December 2018 on the framework financial regulation for the bodies set up under the TFEU and Euratom Treaty and referred to in Article 70 of Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council (OJ L 122, 10.5.2019, p. 1).

14. To finance the deployment of rapid border interventions and return interventions, the budget of the Agency adopted by the management board shall include a financial operational reserve amounting to at least 2 % of the allocation provided jointly for joint operations at the external borders and operational activities in the area of return. After the end of each month, the executive director may decide to reallocate a sum equivalent to one twelfth of the appropriations of the reserve to other operational activities of the Agency. In such a case, the executive director shall inform the management board.

15. Budgetary commitments for actions extending over more than one financial year may be broken down over several years into annual instalments.

Article 116

Implementation and control of the budget

1. The executive director shall implement the Agency's budget.
2. By 1 March of a financial year $N + 1$, the Agency's accounting officer shall communicate the provisional accounts for the financial year N to the Commission's accounting officer and to the Court of Auditors. The Commission's accounting officer shall consolidate the provisional accounts of the institutions and decentralised bodies in accordance with Article 245 of Regulation (EU, Euratom) 2018/1046.
3. The Agency shall send a report on the budgetary and financial management for year N to the European Parliament, to the Council and to the Court of Auditors by 31 March of year $N + 1$.

4. The Commission's accounting officer shall send the Agency's provisional accounts for year N, consolidated with the Commission's accounts, to the Court of Auditors by 31 March of year N + 1.

5. On receipt of the Court of Auditors' observations on the Agency's provisional accounts for year N, pursuant to Article 246 of Regulation (EU, Euratom) 2018/1046, the executive director shall draw up the Agency's final accounts under his or her own responsibility and forward them to the management board for an opinion.

6. The management board shall deliver an opinion on the Agency's final accounts for year N.
7. By 1 July of year N + 1, the executive director shall send the final accounts, together with the opinion of the management board, to the European Parliament, to the Council, to the Commission and to the Court of Auditors.
8. The final accounts for year N shall be published in the *Official Journal of the European Union* by 15 November of year N + 1.
9. The executive director shall send the Court of Auditors a reply to its observations by 30 September of year N + 1. He or she shall also send this reply to the management board.

10. The executive director shall submit to the European Parliament, at the latter's request, any information required for the smooth application of the discharge procedure for year N, in accordance with Article 261(3) of Regulation (EU, Euratom) 2018/1046.

11. On a recommendation from the Council acting by qualified majority, the European Parliament shall, before 15 May of the year N + 2, give a discharge to the executive director in respect of the implementation of the budget for the year N.

Article 117

Combating fraud

1. In order to combat fraud, corruption and other illegal activities, the provisions of Regulation (EU, Euratom) No 883/2013 shall apply without restriction. The Agency shall accede to the Interinstitutional Agreement of 25 May 1999 concerning internal investigations by the European Anti-Fraud Office (OLAF) and shall adopt, without delay, the appropriate provisions applicable to all staff of the Agency using the template set out in the Annex to that Agreement.

2. The Court of Auditors shall have the power of audit, on the basis of documents and of on-the-spot inspections, over all grant beneficiaries, contractors and subcontractors who have received Union funds from the Agency.

3. OLAF may carry out administrative investigations, including on-the-spot checks and inspections, in accordance with the provisions and procedures laid down in Regulation (EU, Euratom) No 883/2013 and Council Regulation (Euratom, EC) No 2185/96⁴⁸ 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 agreement or grant decision or a contract funded by the Agency.

⁴⁸ Council Regulation (Euratom, EC) 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).

4. In accordance with Regulation (EU) 2017/1939, the European Public Prosecutor's Office (EPPO) may investigate and prosecute fraud and other illegal activities affecting the financial interests of the Union as provided for in Directive (EU) 2017/1371.

5. Without prejudice to paragraphs 1 to 4, working arrangements with third countries and with international organisations, grant agreements, grant decisions and contracts of the Agency shall contain provisions expressly empowering the Court of Auditors, OLAF and EPPO to conduct such audits and investigations, in accordance with their respective competences.

Article 118

Prevention of conflicts of interest

The Agency shall adopt internal rules requiring the members of its bodies and its staff to avoid any situation liable to give rise to a conflict of interest during their employment or term of office and to report such situations.

The Agency shall ensure that there is transparency as regards lobbying by means of a transparency register and by disclosing all its meetings with third-party stakeholders. The transparency register shall include all meetings and contacts between third-party stakeholders and the executive director, deputy executive directors and heads of division in matters concerning procurements and tenders for services, equipment or outsourced projects and studies. The Agency shall keep a record of all meetings of its staff with third-party stakeholders in matters concerning procurements and tenders for services, equipment or outsourced projects and studies.

Article 119

Administrative inquiries

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

Article 120

Financial provision

The financial rules applicable to the Agency shall be adopted by the management board after consulting the Commission. They shall not depart from Delegated Regulation (EU) No 1271/2013 unless such a departure is specifically required for the Agency's operation and the Commission has given its prior consent. In this framework, the management board shall adopt specific financial rules applicable to the Agency's activities in the area of cooperation with third countries in the field of return.

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Article 121

Evaluation

1. ***Without prejudice to Article 59***, by ... [***four years after the entry into force of this Regulation***], and every four years thereafter, the Commission shall carry out an evaluation of this Regulation. The evaluation shall assess in particular:

- (a) the results achieved by the Agency, having regard to its objectives, mandate, ***resources*** and tasks;
- (b) the impact, effectiveness and efficiency of the Agency's performance and its working practices in relation to its objectives, mandate and tasks;
- (c) ***inter-agency cooperation at the European level, including*** the implementation of European cooperation on coast guard functions;

- (d) the possible need to modify the mandate of the Agency;
- (e) the financial implications of any such modification;
- (f) *the functioning of the standing corps and, as from the second evaluation, its overall number and composition;***
- (g) *the level of training, specialised expertise and professionalism of the standing corps.***

The evaluation shall include a specific analysis on the way the Charter and other relevant Union law has been complied with in the application of this Regulation.

2. *The evaluation shall also assess the attractiveness of the Agency as an employer for the recruitment of statutory staff, with a view of ensuring quality of the candidates and geographical balance.*

3. *When carrying out the evaluation, the Commission shall seek input from relevant stakeholders, including the consultative forum and FRA.*

4. The Commission shall send the evaluation reports together with its conclusions on the reports to the European Parliament, to the Council and to the management board. The management board may issue recommendations regarding changes to this Regulation to the Commission. The evaluation reports and the conclusions on the reports shall be made public. The Member States and the Agency shall provide the Commission with the information necessary to draft the evaluation reports. *Where necessary, the evaluation reports shall be accompanied by legislative proposals.*

5. The Agency shall submit a report to the European Parliament and to the Council on the functioning of EUROSUR by 1 December 2021 and every two years thereafter.

Member States shall provide the Agency with the information necessary to draft *those* reports.

6. As part of the evaluation referred to in paragraph 1, the Commission shall provide an overall evaluation of EUROSUR accompanied, where necessary, by appropriate proposals to improve its functioning.

The Member States and the Agency shall provide the Commission with the information necessary to produce the overall evaluation referred to in the first subparagraph.

When carrying out the overall evaluation referred to in the first subparagraph, the Commission shall seek input from relevant stakeholders, including the consultative forum and FRA.

CHAPTER V

Final provisions

Article 122

Committee procedure

1. The Commission shall be assisted by a committee ('the European Board and Coast Guard Committee'). That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.

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2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

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Article 123

Repeal *and transitional provisions*

1. Regulation (EU) No 1052/2013 is repealed *with the exception of Article 9(3), (5), (7) to (10) and Article 10(5) and (7) thereof, which are repealed with effect from the date of the entry into force of the implementing act referred to in Article 24(3) of this Regulation.*
2. Regulation (EU) 2016/1624 is repealed with the exception of Articles 20, 30 and 31 thereof, which are repealed with effect from 1 January 2021.
3. Deployments in accordance with Article 54 to 58 shall take place as of 1 January 2021.
4. *For the deployments in 2021, the management board shall adopt the decisions referred to Article 54(4) and Article 64(6) by 31 March 2020.*

5. For the purpose of supporting the development of human resources to secure the contributions of the Member States to the standing corps, Member States shall be entitled to receive funding in 2020 in accordance with point (a) of Article 61(1). The numbers in Annex II for 2022 shall be used as a reference for the relevant funding in 2020.

6. *In order to effectively contribute the required numbers of statutory staff to the first deployments of the standing corps and the setting up of the ETIAS Central Unit, the Agency shall launch the necessary preparations, including recruitment and training, as of ... [OJ: date of entry into force of this Regulation] and in accordance with the budgetary rules.*

7. *Until ... [OJ: two years after the date of entry into force of this Regulation], Member States may provide information to EUROSUR on border checks and air border surveillance on a voluntary basis.*

8. *References to the repealed acts shall be construed as references to this Regulation and shall be read in accordance with the correlation table in Annex VI to this Regulation.*

Article 124

Entry into force and applicability

1. This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.
2. ***Article 79 shall apply from the date of the effective transfer of the system referred to in that Article.***
3. Article 12(3), Article 70 and Article 100(5), insofar as they concern the cooperation with the United Kingdom, shall apply until the day on which the Treaties cease to apply to the United Kingdom pursuant to Article 50(3) TEU or, provided that a withdrawal agreement concluded with the United Kingdom in accordance with Article 50(2) TEU has entered into force by that date, until the end of the transition period set in that withdrawal agreement.

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

Done at ...

For the European Parliament

For the Council

The President

The President

ANNEX I

Capacity of the standing corps per year and category in accordance with Article 54

Category Year	Category 1 Statutory staff	Category 2 Operational staff for long- term secondments	Category 3 Operational staff for short-term deployments	Category 4 Reserve for rapid reaction	Total for the standing corps
2021	<i>1000</i>	<i>400</i>	<i>3600</i>	<i>1500</i>	<i>6500</i>
2022	<i>1000</i>	<i>500</i>	<i>3500</i>	<i>1500</i>	<i>6500</i>
2023	<i>1500</i>	<i>500</i>	<i>4000</i>	<i>1500</i>	<i>7500</i>
2024	<i>1500</i>	<i>750</i>	<i>4250</i>	<i>1500</i>	<i>8000</i>
2025	<i>2000</i>	<i>1000</i>	<i>5000</i>	<i>0</i>	<i>8000</i>
2026	<i>2500</i>	<i>1250</i>	<i>5250</i>	<i>0</i>	<i>9000</i>
2027 and beyond	3000	<i>1500</i>	<i>5500</i>	<i>0</i>	10000

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ANNEX II

Annual *contributions* to be provided by Member States to the standing corps through the long-term secondment of staff in accordance with Article 56

Country / Year		2021	2022	2023	2024	2025	2026	2027 and beyond
Belgium	█	8	10	10	15	20	25	30
Bulgaria	█	11	13	13	20	27	33	40
Czech Republic	█	5	7	7	10	13	17	20
Denmark	█	8	10	10	15	19	24	29
Germany	█	61	73	73	110	152	187	225
Estonia	█	5	6	6	9	12	15	18

Greece	█	<i>13</i>	<i>17</i>	<i>17</i>	<i>25</i>	<i>33</i>	<i>42</i>	<i>50</i>
Spain	█	<i>30</i>	<i>37</i>	<i>37</i>	<i>56</i>	<i>74</i>	<i>93</i>	<i>11</i>
France	█	<i>46</i>	<i>56</i>	<i>56</i>	<i>83</i>	<i>114</i>	<i>141</i>	<i>170</i>
Croatia	█	<i>17</i>	<i>22</i>	<i>22</i>	<i>33</i>	<i>43</i>	<i>54</i>	<i>65</i>
Italy	█	<i>33</i>	<i>42</i>	<i>42</i>	<i>63</i>	<i>83</i>	<i>104</i>	<i>125</i>
Cyprus	█	<i>2</i>	<i>3</i>	<i>3</i>	<i>4</i>	<i>5</i>	<i>7</i>	<i>8</i>

Latvia	█	<i>8</i>	<i>10</i>	<i>10</i>	<i>15</i>	<i>20</i>	<i>25</i>	<i>30</i>
Lithuania	█	<i>10</i>	<i>13</i>	<i>13</i>	<i>20</i>	<i>26</i>	<i>33</i>	<i>39</i>
Luxembourg	█	<i>2</i>	<i>3</i>	<i>3</i>	<i>4</i>	<i>5</i>	<i>7</i>	<i>8</i>
Hungary	█	<i>17</i>	<i>22</i>	<i>22</i>	<i>33</i>	<i>43</i>	<i>54</i>	<i>65</i>
Malta	█	<i>2</i>	<i>2</i>	<i>2</i>	<i>3</i>	<i>4</i>	<i>5</i>	<i>6</i>
Netherlands	█	<i>13</i>	<i>17</i>	<i>17</i>	<i>25</i>	<i>33</i>	<i>42</i>	<i>50</i>
Austria	█	<i>9</i>	<i>11</i>	<i>11</i>	<i>17</i>	<i>23</i>	<i>28</i>	<i>34</i>
Poland	█	<i>27</i>	<i>33</i>	<i>33</i>	<i>50</i>	<i>67</i>	<i>83</i>	<i>100</i>
Portugal	█	<i>8</i>	<i>10</i>	<i>10</i>	<i>15</i>	<i>20</i>	<i>25</i>	<i>30</i>

Romania	█	<i>20</i>	<i>25</i>	<i>25</i>	<i>38</i>	<i>50</i>	<i>63</i>	<i>75</i>
Slovenia	█	<i>9</i>	<i>12</i>	<i>12</i>	<i>18</i>	<i>23</i>	<i>29</i>	<i>35</i>
Slovakia	█	<i>9</i>	<i>12</i>	<i>12</i>	<i>18</i>	<i>23</i>	<i>29</i>	<i>35</i>
Finland	█	<i>8</i>	<i>10</i>	<i>10</i>	<i>15</i>	<i>20</i>	<i>25</i>	<i>30</i>
Sweden	█	<i>9</i>	<i>11</i>	<i>11</i>	<i>17</i>	<i>23</i>	<i>28</i>	<i>34</i>
Switzerland	█	<i>4</i>	<i>5</i>	<i>5</i>	<i>8</i>	<i>11</i>	<i>13</i>	<i>16</i>
Iceland	█	<i>1</i>	<i>1</i>	<i>1</i>	<i>1</i>	<i>1</i>	<i>2</i>	<i>2</i>
Liechtenstein *	0	0	0	0	0	0	0	0
Norway	█	<i>5</i>	<i>7</i>	<i>7</i>	<i>10</i>	<i>13</i>	<i>17</i>	<i>20</i>
TOTAL	█	<i>400</i>	<i>500</i>	<i>500</i>	<i>750</i>	<i>1000</i>	<i>1250</i>	<i>1500</i>

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* Liechtenstein will contribute through proportional financial support.

ANNEX III

Annual *contributions* to be provided by Member States to the standing corps for short-term deployments of staff in accordance with Article 57

Country / Year		2021	2022	2023	2024	2025	2026	2027 and beyond
Belgium	█	72	70	80	85	100	105	110
Bulgaria	█	96	93	107	113	133	140	147
Czech Republic	█	48	47	53	57	67	70	73
Denmark	█	70	68	77	82	97	102	106
Germany	█	540	523	602	637	748	785	827
Estonia	█	43	42	48	51	60	63	66
Greece	█	120	117	133	142	167	175	183

Spain	█	<i>266</i>	<i>259</i>	<i>296</i>	<i>315</i>	<i>370</i>	<i>389</i>	<i>407</i>
France	█	<i>408</i>	<i>396</i>	<i>454</i>	<i>481</i>	<i>566</i>	<i>593</i>	<i>624</i>
Croatia	█	<i>156</i>	<i>152</i>	<i>173</i>	<i>184</i>	<i>217</i>	<i>228</i>	<i>238</i>
Italy	█	<i>300</i>	<i>292</i>	<i>333</i>	<i>354</i>	<i>417</i>	<i>438</i>	<i>458</i>
Cyprus	█	<i>19</i>	<i>19</i>	<i>21</i>	<i>23</i>	<i>27</i>	<i>28</i>	<i>29</i>
Latvia	█	<i>72</i>	<i>70</i>	<i>80</i>	<i>85</i>	<i>100</i>	<i>105</i>	<i>110</i>
Lithuania	█	<i>94</i>	<i>91</i>	<i>104</i>	<i>111</i>	<i>130</i>	<i>137</i>	<i>143</i>

Luxembourg	█	<i>19</i>	<i>19</i>	<i>21</i>	<i>23</i>	<i>27</i>	<i>28</i>	<i>29</i>
Hungary	█	<i>156</i>	<i>152</i>	<i>173</i>	<i>184</i>	<i>217</i>	<i>228</i>	<i>238</i>
Malta	█	<i>14</i>	<i>14</i>	<i>16</i>	<i>17</i>	<i>20</i>	<i>21</i>	<i>22</i>
Netherlands	█	<i>120</i>	<i>117</i>	<i>133</i>	<i>142</i>	<i>167</i>	<i>175</i>	<i>183</i>
Austria	█	<i>82</i>	<i>79</i>	<i>91</i>	<i>96</i>	<i>113</i>	<i>119</i>	<i>125</i>
Poland	█	<i>240</i>	<i>233</i>	<i>267</i>	<i>283</i>	<i>333</i>	<i>350</i>	<i>367</i>
Portugal	█	<i>72</i>	<i>0</i>	<i>80</i>	<i>85</i>	<i>100</i>	<i>105</i>	<i>110</i>

Romania	█	<i>180</i>	<i>175</i>	<i>200</i>	<i>213</i>	<i>250</i>	<i>263</i>	<i>275</i>
Slovenia	█	<i>84</i>	<i>82</i>	<i>93</i>	<i>99</i>	<i>117</i>	<i>123</i>	<i>128</i>
Slovakia	█	<i>84</i>	<i>82</i>	<i>93</i>	<i>99</i>	<i>117</i>	<i>123</i>	<i>128</i>
Finland	█	<i>72</i>	<i>70</i>	<i>80</i>	<i>85</i>	<i>100</i>	<i>105</i>	<i>110</i>
Sweden	█	<i>82</i>	<i>79</i>	<i>91</i>	<i>96</i>	<i>113</i>	<i>119</i>	<i>125</i>

Switzerland	█	<i>38</i>	<i>37</i>	<i>43</i>	<i>45</i>	<i>53</i>	<i>56</i>	<i>59</i>
Iceland	█	<i>5</i>	<i>5</i>	<i>5</i>	<i>6</i>	<i>7</i>	<i>7</i>	<i>7</i>
Liechtenstein*	█	<i>0</i>						
Norway	█	<i>48</i>	<i>47</i>	<i>53</i>	<i>57</i>	<i>67</i>	<i>70</i>	<i>73</i>
TOTAL	█	<i>3600</i>	<i>3500</i>	<i>4000</i>	<i>4250</i>	<i>5000</i>	<i>5250</i>	<i>5500</i>

█

* Liechtenstein will contribute through proportional financial support.

ANNEX IV

*Contributions to be provided by Member States to the standing corps through the reserve
for rapid reaction in accordance with Article 58*

<i>Country</i>	<i>Number</i>
<i>Belgium</i>	<i>30</i>
<i>Bulgaria</i>	<i>40</i>
<i>Czech Republic</i>	<i>20</i>
<i>Denmark</i>	<i>29</i>
<i>Germany</i>	<i>225</i>
<i>Estonia</i>	<i>18</i>
<i>Greece</i>	<i>50</i>

<i>Spain</i>	<i>111</i>
<i>France</i>	<i>170</i>
<i>Croatia</i>	<i>65</i>
<i>Italy</i>	<i>125</i>
<i>Cyprus</i>	<i>8</i>
<i>Latvia</i>	<i>30</i>
<i>Lithuania</i>	<i>39</i>
<i>Luxembourg</i>	<i>8</i>

<i>Hungary</i>	<i>65</i>
<i>Malta</i>	<i>6</i>
<i>Netherlands</i>	<i>50</i>
<i>Austria</i>	<i>34</i>
<i>Poland</i>	<i>100</i>
<i>Portugal</i>	<i>30</i>
<i>Romania</i>	<i>75</i>

<i>Slovenia</i>	<i>35</i>
<i>Slovakia</i>	<i>35</i>
<i>Finland</i>	<i>30</i>
<i>Sweden</i>	<i>34</i>
<i>Switzerland</i>	<i>16</i>
<i>Iceland</i>	<i>2</i>
<i>Liechtenstein</i> *	<i>0</i>
<i>Norway</i>	<i>20</i>
<i>TOTAL</i>	<i>1500</i>

* Liechtenstein will contribute through proportional financial support.

ANNEX V

Rules on the use of force, including training and the supply, control and use of service weapons and non-lethal equipment, applicable to statutory staff deployed as members of the teams

1. GENERAL PRINCIPLES GOVERNING THE USE OF FORCE AND WEAPONS

For the purposes of this Regulation, ‘use of force’ refers to recourse by statutory staff deployed as members of the teams to physical means for the purposes of performing their functions or ensuring self-defence, which includes the use of hands and body and the use of any instruments, weapons, including firearms, or equipment.

Weapons, ammunition and equipment shall only be carried and used during operations. Carrying or using weapons, ammunition and equipment during off duty periods shall be prohibited.

In accordance with Article 82(8), the use of force and weapons by statutory staff deployed as members of the teams shall be exercised in accordance with the national law of the host Member State, in the presence of border guards of the host Member State.

Without prejudice to the authorisation by the host Member State and the applicability of its national law to the use of force during operations, the use of force and weapons by statutory staff deployed as members of the teams shall comply with the principles of necessity, proportionality and precaution (the “core principles”) as set out below.

The operational plan agreed between the executive director and the host Member State shall define the conditions for carrying and using weapons in accordance with national law or operating procedures during operations.

The Principle of Necessity

The use of force, whether through direct physical contact or by the use of weapons or equipment, shall be exceptional and shall only take place where it is strictly necessary to ensure the performance of the Agency's duties or in self-defence. Force shall only be used as a last resort, after every reasonable effort has been made to resolve a situation using non-violent means, including by means of persuasion, negotiation, or mediation. The use of force or coercive measures shall never be arbitrary or abusive.

The Principle of Proportionality

Whenever the lawful use of force or firearms is unavoidable, statutory staff deployed as members of the teams shall act in proportion to the seriousness of the situation and the legitimate objective to be achieved. During operational activities, the proportionality principle shall guide both the nature of the force used (e.g. the need for the use of weapons) as well as the extent of the force applied. Statutory staff deployed as members of the teams shall not use more force than is absolutely necessary to achieve the legitimate law enforcement objective. If a firearm is used, statutory staff deployed as members of the teams shall ensure that such use causes the least possible injury and *minimises* injury and damage to the greatest possible extent. *Where the measures lead to an unacceptable result, statutory staff* deployed as members of the teams *may waive the measure*. The principle of proportionality requires the Agency to provide equipment and self-defensive tools to statutory staff deployed as members of the teams which are necessary to enable the appropriate level of force to be applied.

The Duty of Precaution

Operational activities carried out statutory staff deployed as members of the teams shall fully respect and aim to preserve human life **and human dignity**. All necessary steps that can minimise the risk of injury and damage during operations shall be taken. This obligation includes a general obligation for statutory staff deployed as members of the teams to give clear warnings of their intention to use force, unless giving such a warning would unduly place the members of the teams at risk or would create a risk of death or serious harm to others, or would be clearly inappropriate or ineffective in the particular circumstances.

█

2. SPECIFIC █ RULES FOR THE MOST COMMONLY USED INSTRUMENTS OF FORCE

█ (█ EQUIPMENT OF STATUTORY STAFF DEPLOYED AS MEMBERS OF THE TEAMS)

In accordance with the core principles, the use of force shall only be permissible to the extent that the use of force is necessary for achieving the immediate law enforcement aim, and only after:

- attempts to resolve a potentially violent confrontation by means of persuasion, negotiation, mediation have been exhausted and failed,
- a warning of the intention to use force has been given.

Where it is necessary to escalate the level of intervention (for example, using a weapon or a different kind of weapon), clear warning of such an escalation shall also be given unless giving such a warning would unduly place members of teams at risk or would create a risk of death or serious harm to others, or would be clearly inappropriate or ineffective in the particular circumstances.

Firearms

Statutory staff deployed as members of the teams shall not use firearms against persons, except in the following circumstances, and only when less extreme means are insufficient to achieve the necessary objectives:

- the use of firearms by statutory staff deployed as members of the teams is a last resort in an extreme emergency, especially if there is any risk that bystanders might be endangered,

- the use of firearms by statutory staff deployed as members of the teams is necessary to defend themselves or others against an imminent threat of death or serious injury,
- the use of firearms by statutory staff deployed as members of the teams is to prevent an imminent threat of death or serious injury,
- the use of firearms by statutory staff deployed as members of the teams is to repel an actual attack or prevent an impending dangerous attack on essential institutions, services or facilities.

Prior to the use of firearms, statutory staff deployed as members of the teams must give a clear warning of their intention to use such firearms. Warnings may be given orally or by the firing of warning shots.

Non-lethal weapons

Baton

Approved batons may be used as a means of defence or as a weapon, as appropriate, in line with the core principles, as follows:

- when lesser use of force is considered clearly unsuitable for the purpose,
- to avert an actual or impending attack on property.

Prior to the use of batons, statutory staff deployed as members of the teams must give a clear warning of their intention to use batons. In using batons, statutory staff deployed as members of the teams shall always aim to minimise the risk of injury suffered and avoid contact with the head.

Lachrymatory agents (e.g. pepper spray)

Approved lachrymatory agents may be used as a means of defence or as a weapon, as appropriate, in line with the core principles, as follows:

- when lesser use of force is considered clearly unsuitable for the purpose,
- to avert an actual or impending attack.

Other equipment

Handcuffs

Handcuffs shall only be placed on persons who are considered to present a danger to themselves or to others, in order to ensure their safe detention or transportation and to ensure the safety of statutory staff deployed as members of the teams and other members of the teams. ***Handcuffs shall only be used for the shortest time possible and only where strictly necessary.***

3. PRACTICAL RULES ON THE USE OF FORCE, SERVICE WEAPONS, AMMUNITION AND EQUIPMENT DURING OPERATIONS

General practical rules on the use of force, weapons and other equipment during operations

In accordance with Article 82(8), statutory staff deployed as members of the teams are to exercise their executive power, including the use of force, under the command and control of the host Member State, and shall only use force, including using weapons, ammunition and equipment, in the presence of the border guards of the host Member State following the authorisation of the competent authorities of the host Member State . Nevertheless, the competent authorities of the host Member State may authorise statutory staff deployed as members of the teams, with the consent of the Agency, to use force in the absence of officers of the host Member State.

The host Member State may prohibit the carrying of certain service weapons, ammunition and equipment in accordance with the second subparagraph of Article 82(8).

Without prejudice to the authorisation by the host Member State and the applicability of its national law to the use of force during operations, the use of force and weapons by statutory staff deployed as members of the teams shall:

- (a) comply with the core principles and specific rules referred to in Part 2;*
- (b) respect fundamental rights as guaranteed under international and Union law, including, in particular, under the Charter, the European Convention for the Protection of Human Rights and Fundamental Freedoms, the United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, and the United Nations Code of Conduct for Law Enforcement Officials;*
- (c) comply with the Agency's code of conduct.*

4. CONTROL MECHANISM

The Agency shall provide the following safeguards in relation to the use of force, weapons, ammunition and equipment, and shall provide a stocktaking in its annual report.

Training

The training provided in accordance with Article 62(2) shall cover theoretical and practical aspects in relation to the prevention of and use of force. The theoretical training shall incorporate psychological training, including training in resilience and working in situations of high pressure, as well as techniques for avoiding the use of force, such as negotiation and mediation. The theoretical training shall be followed by obligatory and adequate theoretical and practical training on the use of force, weapons, ammunition and equipment ***and on applicable fundamental rights safeguards***. In order to ensure a common practical understanding and approach, the practical training shall end with a simulation relevant to the activities to be carried out during the deployment ***and shall include a practical simulation involving the operationalisation of fundamental rights safeguards***.

The Agency shall provide statutory staff deployed as members of the teams with annual ongoing training on the use of force. Such training shall take place as per the training provided for in Article 62(2). In order for statutory staff deployed as members of the teams to be permitted to carry service weapons and to use force, they shall be required to have successfully completed the annual ongoing training. The annual ongoing training shall cover theoretical and practical aspects as described in the first paragraph. The annual ongoing training shall last at least 24 hours in total, with the theoretical training taking at least 8 hours and the practical training taking at least 16 hours. The practical training shall be divided into at least 8 hours for physical training, using physical restraint techniques, and at least 8 hours for the use of firearms.

Use of narcotics, drugs and alcohol consumption

Statutory staff deployed as members of the teams shall not consume or be under the influence of alcohol while on duty.

Statutory staff deployed as members of the teams shall not possess or use narcotics or drugs, unless prescribed on medical grounds. Statutory staff deployed as members of the teams requiring drugs for medical purposes shall immediately inform their immediate superior of such a requirement. Their participation in operational activities may be reviewed having regard to potential effects and side-effects associated with the use of the substance.

The Agency shall establish a control mechanism to ensure that its statutory staff deployed as members of the teams do not carry out their functions under the influence of narcotics, drugs or alcohol. That mechanism shall be based on regular medical testing of statutory staff deployed as members of the teams in order to identify any possible consumption of narcotics, drugs or alcohol. Any positive test results shall be immediately reported to the executive director.

Reporting

Any incidents involving the use of force shall be immediately reported through the chain of command to the coordination structure relevant for each operation and to the fundamental rights officer and the executive director. The report shall provide full details of the circumstances in which such use arose.

Duty to cooperate and inform

Statutory staff deployed as members of the teams and any other participants in operations shall cooperate in the gathering of facts related to any incident which was reported during an operational activity.

Supervisory mechanism

The Agency shall establish a supervisory mechanism as referred to in point (a) of Article 55(5).

Complaints mechanism

Any person may report suspected breaches by statutory staff deployed as members of the teams of the rules on the use of force applicable under this Annex through the complaints mechanism provided for in Article **III**.

Sanctions

Without prejudice to Article 85, where the Agency establishes that a member of its statutory staff deployed as a member of the teams has performed activities in breach of the rules applicable under this Regulation, including fundamental rights protected under the Charter, the European Convention for the Protection of Human Rights and Fundamental Freedoms and international law, the executive director shall take adequate measures, which may include the immediate recall of that statutory staff member from the operational activity, and any disciplinary measures in accordance with the Staff Regulations, including the removal of the statutory staff member from the Agency.

Role of the fundamental rights officer

The fundamental rights officer shall verify and provide feedback on the content of induction and refresher training paying special regard to aspects relating to fundamental rights and *how fundamental rights can be protected in* situations where the use of force is necessary, and ensure relevant preventive techniques are included.

The fundamental rights officer shall report on the respect for fundamental rights within the law enforcement practices of the host Member State *or host third country*. That report shall be submitted to the executive director and shall be taken into account in the design of the operational plan.

The fundamental rights officer shall ensure that ■ incidents related to the use of force and use of weapons, ammunition and equipment are *thoroughly investigated and* reported without delay to the executive director. *The results of such investigations shall be transmitted to the consultative forum.*

All activities related to the use of force, weapons, ammunition and equipment shall be regularly monitored by the fundamental rights officer, and all incidents shall be reported in the fundamental rights officer's reports as well in the annual report of the Agency.

5. PROVISION OF SERVICE WEAPONS

Authorisation of weapons

For the purposes of determining the exact service weapons, ammunition and other equipment to be used by statutory staff deployed as members of the teams, the Agency shall establish an exhaustive list of items to be included in personal equipment sets.

Personal equipment sets shall be used by all statutory staff deployed as members of the teams. The Agency may also complement personal equipment sets with additional weapons, ammunition or other equipment specific for the purpose of carrying out specific tasks within one or two types of teams.

The Agency shall ensure that all weapons, including firearms, ammunition and equipment provided to statutory staff deployed as members of the teams comply with all the necessary technical standards.

Weapons, ammunition and equipment that are authorised for use shall be listed in the operational plan in line with the requirements on admissible and prohibited weapons of the host Member State.

■

Instructions for duty period

Weapons, ammunition and equipment may be carried ■ during operations *and shall be used only as measures of last resort*. Carrying or using weapons, ammunition and equipment during off-duty periods shall not be allowed. The Agency shall establish specific rules and measures to facilitate the storage of weapons, ammunition and other equipment of statutory staff deployed as members of the teams during off-duty periods in secured facilities *as referred to in point (c) of Article 55(5)*.

■ ANNEX VI

CORRELATION TABLE

Regulation (EU) 2016/1624	Regulation (EU) No 1052/2013	This Regulation
Article 1, first sentence	--	Article 1, first paragraph
Article 1, second sentence	--	Article 1, second paragraph
Article 2, point (1)	--	Article 2, point 1
--	--	Article 2, points (2), (4), (5), (6), (9)(15), (16), (17), (18), (29), and (30)
Article 2, point (2)	--	Article 2, point (3)
--	Article 3, points (b), (c), (d), (f) and (g)	Article 2, points (7), (8), (10), (11), and (13)
Article 2, point (16)	Article 3, point (e)	Article 2, point (12)
--	Article 3, point (i)	Article 2, point (14)
Article 2, point (9)		Article 2, point (19)
Article 2, points (5) to (7)	--	Article 2, points (20) to (22)
Article 2, points (10) to (15)		Article 2, points (23) to (28)
Article 4, points (a) to (d)	--	Article 3(1), points (a) to (d)
Article 4, point (e)	--	Article 3(1), points (e) and (f)
Article 4, points (f) to (k)	--	Article 3(1), points (g) to (l)
--	--	Article 3(2)
Article 3(1)	--	Article 4
Article 6	--	Article 5

Article 7	--	Article 6
Article 5(1)	--	Article 7(1)
--		Article 7(2)
Article 5(2) and (3)	--	Article 7(3) and (4)
Article 8(2)	--	Article 7(5)
--	--	Article 8(1) to (4)
Article 3(2)	--	Article 8(5)
Article 3(3)	--	Article 8(6)
--	--	Article 8(7) and (8)
--	--	Article 9
Article 8(1), point (a)	--	Article 10(1), point (a)
--	--	Article 10(1), point (b)
Article 8(1), point (b)		Article 10(1), point (c)
Article 8(1), point (c)		Article 10(1), point (d)
--	--	Article 10(1), point (e)
Article 8(1), point (s)	--	Article 10(1), point (f)
Article 8(1), point (d)	--	Article 10(1), point (g)
Article 8(1), point (e)	--	Article 10(1), point (h)
Article 8(1), point (f)	--	Article 10(1), point (i)
Article 8(1), point (g)	--	Article 10(1), point (j)
Article 8(1), point (h)	--	Article 10(1), point (k)
--	--	Article 10(1), point (l)
Article 8(1), point (i)	--	Article 10(1), point (m)

Article 8(1), point (l)	--	Article 10(1), point (n)
Article 8(1), point (n)		Article 10(1), point (o)
Article 8(1), point (o)		Article 10(1), point (p)
Article 8(1), point (m)		Article 10(1), point (q)
--	--	Article 10(1), points (r) and (s)
Article 8(1), point (t)		Article 10(1), point (t)
--	--	Article 10(1), point (u)
Article 8(1), point (u)	--	Article 10(1), point (v)
Article 8(1), point (p)		Article 10(1), point (w)
Article 8(1), point (q)		Article 10(1), point (x)
--	--	Article 10(1), point (y)
Article 8(1), point (j)		Article 10(1), point (z)
--	Article 6(1), point (a)	Article 10(1), point (aa)
Article 8(1), point (r)	--	Article 10(1), point (ab)
Article 8(1), point (s)	--	Article 10(1), point (ac)
--	--	Article 10(1), points (ad) to (ag)
Article 8(3)	--	Article 10(2)
Article 9	--	Article 11
Article 10	--	Article 12(1)
--	--	Article 12(2) and (3)
Article 23	--	Article 13(1), (first sentence)
--	--	Article 13(1), second sentence
--	--	Article 13(2) and (3)

--	Article 7(1)	Article 14(1)
--	Article 7(2)	Article 14(2)
Article 44(1)	--	Article 15(1) and (2)
--	--	Article 15(3)
--	--	Article 16
--	--	Article 17
--	Article 1	Article 18
--	Article 2(1) and (2)	Article 19(1)
--	Article 2(3)	Article 19(2)
--	Article 4(1), points (a) and (b)	Article 20(1), points (a) and (b)
--	Article 4(1), point (d)	Article 20(1), point (c)
--	--	Article 20(1), points (d), (e) and (f)
--	Article 4(2) and (3)	Article 20(2) and (3)
--	Article 5(1), (2) and (3)	Article 21(1), (2) and (3), points (a) to (h)
--	--	Article 21(3), points (i) and (j)
	Article 17(1), (2), and (3)	Article 21(4), (5), and (6)
--	Article 5(4)	Article 21(7)
--	Article 21	Article 22
--	Article 22(1)	Article 23(1)
--	--	Article 23(2) and (3)
--	Article 8(1) and (2)	Article 24(1)
--	--	Article 24(2)
	--	Article 24(3)

--	Article 9(1)	Article 25(1)
--	Article 9(2), points (a) to (e)	Article 25(2), points (a) to (e)
--	--	Article 25(2), point (f)
--	Article 9(2), point (f)	Article 25(2), point (g)
--	Article 9(2), point (g)	Article 25(2), point (h)
--	Article 9(2), point (h)	Article 25(2), point (i)
--	Article 9, point (i)	Article 25(2), point (j)
--	Article 9(2), point (j)	Article 25(2), point (k)
	Article 9(2), point (k)	Article 25(2), point (l)
--	Article 9(4)	Article 25(3)
--	Article 9(5), point (a), second sentence	Article 25(4)
--	Article 9(10)	Article 25(5)
--	Article 10(1)	Article 26(1)
--	Article 10(2), points (a) and (b)	Article 26(2), points (a) and (b)
--	Article 10(2), point (d)	Article 26(2), point (c)
	Article 10(2), point (e)	Article 26(2), point (d)
--	--	Article 26(2), point (e)
	Article 10(2), point (f)	Article 26(2), point (f)
--	Article 10(3), point (a)	Article 26(3), point (a)
--	--	Article 26(3), point (b)
	Article 10(3), point (c)	Article 26(3), point (c)
--	Article 10(5)	Article 26(4)
--	Article 10(6)	Article 26(5)

--	Article 10(4)	Article 26(6)
--	--	Article 27
--	Article 12(1)	Article 28(1)
--	Article 12(2), points (a), (b), and (c)	Article 28(2), points (a), (b) and (c)
--	--	Article 28(2), point (d)
--	Article 12(2), point (d)	Article 28(2), point (e)
--	Article 12(2), point (e)	Article 28(2), point (f)
--	--	Article 28(2), points (g), (h) and (i)
--	Article 12(4) and (5)	Article 28(3) and (4)
Article 11	--	Article 29 (1), (2), (3) and (5) to (8)
--	--	Article 29(4)
--	Article 14	Article 30
Article 12		Article 31(1), (2) and (4) to (7), and Article 31(3), points (a) to (e), and (g) to (j)
--	--	Article 31(3), points (f) and (k)
Article 13	--	Article 32(1) to (8), (10) and (11)
--	--	Article 32(9)
--	--	Article 33
--	Article 15(1)	Article 34(1)
--	--	Article 34(2)
--	--	Article 34(3)
--	Article 15(2)	Article 34(4)
--	Article 15(3)	Article 34(5)

--	Article 16 (1), (2), and (3)	Article 35 (1), points (a), (b) and (c) and Article 35 (2) and (3)
--	--	Article 35(1), point (d)
--	Article 16(5)	Article 35(4)
Article 14	--	Article 36 (1), (3) and (4) and Article 36(2) points (a) to (e)
--	Article 16(4), point (a)-	Article 36(2), point (f)
Article 15(1), (2) , and (3)	--	Article 37(1), (2), and (3)
Article 15(5)	--	Article 37(4)
Article 16	--	Article 38(1), (2) and (4) and Article 38(3), points (a) to (k) and points (m) to (o)
--	--	Article 38(3), point (l) and Article 38(5)
Article 17	--	Article 39 (1), (2), (3), (5), (7) to (10) and (13) to (15)
--	--	Article 39(4), (6), (11) and (12)
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--	--	Article 40(4), point (d)
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--	--	Article 45(2)

Article 25	--	Article 46(1) to (4) and (7)
--	--	Article 46(5) and (6)
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Article 27(1), point (c)	--	Article 48(1), point (a) (ii) and(iii)
--	--	Article 48(1), point (a)(iv)
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--	--	Article 48(1), points (c) and (d)
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--	--	Article 48(2), point (e)
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--	--	Article 62(10)
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--	--	Article 63(2)
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--	--	Article 68(1), point (i) and (j)
--	--	Article 68(1), third subparagraph, points (a) to (d)

--	Article 18(3)	Article 68(1), third subparagraph, point (e)
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--	Article 20(7)	Article 75(3)
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--	--	Article 76(2), (3) and (4)
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--	--	Article 88(1), first subparagraph

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--	--	Article 88(1), second subparagraph, point (b)
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--	--	Article 88(2), point (b)
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--	--	Article 89(3)
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--	--	Article 100 (2), first subparagraph, points (c), (e), (aa), (ac), (ad), (ae)
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**Joint statement of the European Parliament and of the Council on the possible
mechanisms to ensure the attractiveness of the European Border and Coast
Guard Agency**

The European Border and Coast Guard Agency is expected to face challenging circumstances in the coming years to fulfil exceptional needs for recruiting, training and retaining qualified staff from the broadest possible geographical basis. In view of the Agency's mandate and the important number of its staff, it is essential to explore mechanisms which would allow to ensure the attractiveness of the Agency as an employer by adapting the remunerations of the staff of the Agency in Warsaw, in accordance with the applicable Union law.

The European Parliament and the Council therefore call upon the Commission to assess the basis and modalities for any such appropriate mechanism, in particular when presenting the proposals for the revision of the Staff Regulations of Officials of the European Union and the Conditions of Employment of Other Servants of the Union, laid down in Council Regulation (EEC, Euratom, ECSC) No 259/68⁴⁹. Any such mechanism shall be proportionate to the importance of the objectives pursued and not give rise to unequal treatment among staff of the Union institutions, bodies, offices and agencies if such Union institutions, bodies, offices and agencies are confronted with a similar situation.

⁴⁹ OJ L 56, 4.3.1968, p. 1.