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from : Presidency

to : Permanent Representatives Committee

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Subject : **Proposal for a Regulation of the European Parliament and the Council amending Council Regulation (EC) No 2007/2004 establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (FRONTEX) - Analysis of the final compromise text with the view to agreement**

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1. On 24 February 2010 the Commission presented a proposal for a Regulation of the European Parliament and of the Council amending Council Regulation (EC) No 2007/2004 establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (FRONTEX), as set out in doc. 6898/10 FRONT 22 CODEC 222 COMIX 151 + COR 1.
2. The purpose of the proposal is to clarify the mandate of FRONTEX and to address identified shortcomings in the light of evaluations carried out and practical experience, in order to ensure a well defined and better functioning of the Agency in the coming years. The Council and the European Council on several occasions, including in the Stockholm Programme, requested that FRONTEX's role and capabilities be enhanced.

3. The original Commission proposal indicated as legal basis Article 74 and 77 (1) (b) and (c) of the TFEU. However, it has been agreed with the EP that the correct legal basis is Article 74 and 77 (2) (b) and (d). DK, IE and UK do not participate in the adoption of this instrument. The proposal is subject to the ordinary legislative procedure referred to in Article 294 of the TFEU.
4. Following the sixth trilogue with the European Parliament on 21 June 2011, Coreper on 22 June 2011 confirmed the agreement reached on the draft Regulation, on the basis of doc. 11935/11 FRONT 81 CODEC 1072 COMIX 409<sup>1</sup>.
5. In accordance with the conclusions drawn in Coreper, the necessary technical changes to the draft have been made in consultation with the European Parliament and the Commission, regarding in particular the recitals and the introduction of the name "European Border Guard Teams" in the relevant provisions of the draft regulation.
6. The European Parliament's Committee on Civil Liberties, Justice and Home Affairs (LIBE) is expected to adopt the report on the proposal with draft amendments to the proposal corresponding to the text set out in Annex I on 12 July 2011. The Presidency understands that the European Parliament may adopt its position on the draft Regulation at its Plenary session in September 2011.
7. The draft Council Declaration set out in Annex II has been agreed in the Working Party on Frontiers with a view to the final adoption of the draft Regulation.

The Commission will undertake, by way of a declaration, to launch the feasibility study on the creation of a European system of border guards referred to in the Stockholm programme within one year after the adoption of the Regulation, which will feed into the evaluation foreseen by Article 33(2a) of the draft Regulation. The Commission also undertakes to analyse if there is a need for an amendment of the "RABIT" Regulation with regard to the use of the name "European Border Guard Teams".

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<sup>1</sup> SE maintained its Parliamentary scrutiny reservation.

In relation to Article 9(3) (monitoring of joint return operations), the Commission will undertake, by way of a declaration, to present annually a report on the implementation of this Article to the EP and the Council.

8. The Permanent Representatives Committee is therefore invited to:
- confirm agreement on the text as set out in Annex I, subject, if necessary, to revision by the legal linguists of both institutions;
  - take note that the Presidency will inform the Chairman of the European Parliament Committee on Civil Liberties, Justice and Home Affairs, accordingly by a letter.

**Proposal for a Regulation of the European Parliament and of the Council amending Council Regulation No 2007/2004 establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (FRONTEX)<sup>1</sup>**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Articles 74 and 77(2)(b) *and* (d) thereof,

Having regard to the proposal from the European Commission,

Having regard to the Opinion of the European Economic and Social Committee,

After transmission of the proposal to the national Parliaments,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) The development of a forward-looking and comprehensive European migration policy, based on *human rights*, solidarity and responsibility, *especially for those Member States facing specific or disproportionate pressures*, remains a key policy objective for the European Union.
- (2) Union policy in the field of the external borders aims at an integrated management ensuring a uniform and high level of control and surveillance, which is a necessary corollary to the free movement of persons within the European Union and a fundamental component of an Area of Freedom, Security and Justice. To this end, the establishment of common rules on standards and procedures for the control of the external borders is *contemplated*.
- (3) The efficient implementation of the common rules calls for increased coordination of the operational cooperation between the Member States.
- (4) This Regulation respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union, notably human dignity, prohibition of torture and of inhuman or degrading treatment or punishment, right to liberty and security, the rights to the protection of personal data, right to asylum, non-refoulement, non discrimination, the rights of the child and right to an effective remedy. This Regulation should be applied by the Member States in accordance with these rights and principles. *Any use of force should be in accordance with the national law of the host Member State, including the principles of necessity and proportionality.*

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<sup>1</sup> Changes to the text as compared with the original proposal are indicated in bold and italics.

- (4a) ***Implementation of this Regulation should not affect the rights and the obligations of Member States under the UN 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 and the Geneva Convention Relating to the Status of Refugees.***
- (5) In 2004 the Council adopted Regulation (EC) No 2007/2004 establishing the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (Frontex)<sup>1</sup> (hereinafter referred to as the "Agency") which became operational in May 2005.
- (6) Regulation (EC) No 2007/2004 was amended in 2007 by Regulation (EC) No 863/2007 establishing a mechanism for the creation of Rapid Border Intervention Teams<sup>2</sup>.
- (7) Efficient management of the external borders through checks and surveillance contributes to combat illegal immigration and trafficking in human beings and to reduce the threats to the internal security, public policy, public health and international relations of the Member States.
- (8) Border control at the external borders is in the interest not only of the Member State at whose external borders it is carried out, but of all Member States which have abolished internal border control.
- (8a) ***A further enhancement of the role of the Agency is in line with the Union's objective to develop a policy with a view to the gradual introduction of the concept of Integrated Border Management. The Agency should, within the limits of its mandate, support the Member States in implementing this concept as defined in the Council conclusions on Integrated Border Management of 4 December 2006.***
- (9) The Multiannual programme for an area of Freedom, Security and Justice serving the citizen adopted by the European Council on 10/11 December 2009 (the Stockholm Programme) calls upon a clarification and enhancement of the role of ***the Agency*** regarding the management of the external borders of the European Union.
- (10) The mandate of the Agency should therefore be revised in order to strengthen in particular the operational capabilities of the Agency while ensuring that all measures taken are proportionate to the objectives pursued, ***are effective*** and fully respect fundamental rights and the rights of refugees and asylum seekers, including in particular the prohibition of ***refoulement***.
- (11) Current possibilities for providing effective assistance to the Member States regarding the operational aspects of external border management should be reinforced as concerns the available technical resources; the Agency must be able to plan with sufficient accuracy the coordination of joint operations or pilot projects.
- (12) Minimum levels of necessary technical equipment provided on a compulsory basis by the Member States ***on the basis of annual bilateral negotiations and agreements*** and/or the Agency will largely contribute to a better planning and implementation of the envisaged operations coordinated by the Agency.

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<sup>1</sup> OJ L 349, 25.11.2004, p. 1.

<sup>2</sup> OJ L 199, 31.7.2007, p. 30.

- (13) The Agency should manage lists of technical equipment *owned either* by the Member States *or* by the Agency *and equipment co-owned by the Member States and the Agency, by setting up and keeping* centralised records in a technical equipment pool. *This pool* should contain the minimum numbers of categories of technical equipment necessary to enable the Agency to conduct its activities.
- (14) To ensure effective operations, *teams of border guards should be set up by the Agency. Member States should contribute to these teams with* an appropriate number of skilled border guards *and make them available for deployment, unless they are faced with exceptional situations seriously affecting the discharge of national tasks.*
- (15) The Agency should be able to contribute to those teams with *the* border guards *that are* seconded by Member States to the Agency on a semi-permanent basis, which shall be subject, in the exercise of their tasks and powers, to the same legal framework as the guest officers contributed directly to the Teams by Member States. The Agency should adapt its internal rules on seconded national experts to allow for direct instructions by the host state to the border guards during joint operations and pilot projects.
- (16) A well-defined operational plan, including an evaluation and an obligation to report incidents, agreed prior to the start of the operations amongst *the Agency and the host Member State, in consultation with the* participating Member States and the Agency, will largely contribute to the objectives of this Regulation with a more harmonised modus operandi regarding the coordination of operations.
- (17) The incident reporting scheme shall be used by the Agency to transmit, to the relevant public authorities and the Management Board, any information concerning credible allegations of breaches of, in particular, Regulation (EC) No 2007/2004 or the Schengen Borders Code, including fundamental rights, during joint operations, pilot projects and rapid interventions.
- (18) Risk analysis has demonstrated to be a key element for conducting operations at the external borders. Its quality should be improved by adding a method for *assessing the capacity of Member States to face upcoming challenges, including present and future threats and pressures at the external borders of the Member States of the European Union. However, these assessments should be without prejudice to the Schengen Evaluation Mechanism.*
- (19) The Agency should provide training, including on fundamental rights, *international protection and access to asylum procedures*, at European level for national instructors of border guards and additional training and seminars related to control and surveillance at the external borders and removal of third-country nationals illegally present in the Member States for officers of the competent national services. The Agency may organise training activities, *including an exchange program*, in cooperation with Member States on their territory. Member States should integrate the results of the Agency's work in this perspective in the national training programs of their border guards.
- (20) The Agency should monitor and contribute to the developments in scientific research relevant for its field and disseminate this information to the Commission and the Member States.
- (21) In most Member States, the operational aspects of return of third-country nationals illegally present in the Member States fall within the competencies of the authorities responsible for controlling the external borders. As there is a clear added value in performing these tasks at Union level, the Agency should, in full compliance with the Union's return policy,

accordingly *ensure the coordination or the organization of* joint return operations of Member States and identify best practices on the acquisition of travel documents, and define a Code of Conduct to be followed during the removal of third-country nationals illegally present in the territories of the Member States. No Union financial means should be made available for activities and operations that are not carried out in conformity with the Charter of Fundamental Rights.

- (22) For the purpose of fulfilling its mission and to the extent required for the accomplishment of its tasks, the Agency may cooperate with Europol, the European Asylum Support Office, the Fundamental Rights Agency and other European Union Agencies and bodies, the competent authorities of third countries and the international organisations competent in matters covered by Regulation (EC) No 2007/2004 in the framework of working arrangements concluded in accordance with the relevant provisions of the Treaty. The Agency should facilitate the operational cooperation between Member States and third countries in the framework of the external relations policy of the European Union.
- (23) Cooperation with third countries regarding matters covered by Regulation (EC) No 2007/2004 is increasingly important. To establish a solid cooperation model with relevant third countries the Agency should be able to launch and finance projects of technical assistance and to deploy liaison officers in third countries *in cooperation with the competent authorities of these countries*. The Agency should be able to invite representatives of third countries to participate in its activities, after having provided the necessary training. Establishing cooperation with third countries is relevant also with regards to promoting the European standards of border management, including the respect of fundamental rights and human dignity.
- (24) In order to ensure open and transparent employment conditions and equal treatment of staff, the Staff Regulations of Officials of the European Communities and the Conditions of Employment of Other Servants of the European Communities ("the Staff Regulations") should apply to the staff and to the Executive Director of the Agency, including the rules of professional secrecy or other equivalent duties of confidentiality.
- (24a) Furthermore, specific provisions should be adopted by the Management Board of the Agency to allow national experts from Member States to be seconded to the Agency. Such provisions should, among others, specify that seconded national border guards to be deployed during joint operations and pilot projects and rapid interventions should be considered as guest officers with the corresponding tasks and powers.*
- (25) 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<sup>1</sup> applies to the processing of personal data by the Agency. The European Data Protection Supervisor should therefore monitor the processing of personal data by the Agency and have the power to obtain from the Agency access to all information necessary for his or her enquiries.

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<sup>1</sup> OJ L 8, 12.1.2001, p. 1.

- (26) As far as the Member States are processing personal data, Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data<sup>1</sup> fully applies.
- (27) When ensuring the operational management of IT systems, the Agency should follow European and international standards, ***including on data protection***, taking into account the highest professional requirements.
- (28) Since the objective of this Regulation, namely ***to contribute to the creation of*** an integrated management of operational cooperation at the external borders of the Member States of the European Union, cannot be sufficiently achieved by the Member States and can therefore be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. 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 this objective.
- (29) As regards Iceland and Norway, this Regulation constitutes a development of the Schengen acquis within the meaning of the Agreement concluded by the Council of 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, which fall within the area referred to in Article 1, point A of Council Decision 1999/437/EC<sup>2</sup> on certain arrangements for the application of that Agreement. Consequently, delegations of the Republic of Iceland and the Kingdom of Norway should participate as members of the Management Board of the Agency, albeit with limited voting rights.
- (30) 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<sup>3</sup>, which fall within the area referred to in Article 1, points A, B and G of Decision 1999/437/EC read in conjunction with Article 3 of Council Decision 2008/146/EC on the conclusion, on behalf of the European Community, of the Agreement. ***Consequently, delegations of the Swiss Confederation should participate as members of the Management Board of the Agency, albeit with limited voting rights.***
- (31) 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 which fall within the area referred to in Article 1, points A, B and G of Council Decision 1999/437/EC of 17 May 1999 read in conjunction with ***Council Decision 2011/350/EU on the conclusion on behalf of the Union of the Protocol***<sup>4</sup>. ***Consequently, delegations of the Principality of Liechtenstein should participate as members of the Management Board of the Agency, albeit with limited voting rights.***

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<sup>1</sup> OJ L 281, 23.11.1995, p. 31.

<sup>2</sup> OJ L 176, 10.7.1999, p. 31.

<sup>3</sup> OJ L 53, 27.2.2008, p. 52.

<sup>4</sup> OJ L 160, 18.6.2011, p.19.

- (32) Under the Protocol on the position of Denmark, annexed to the Treaty on European Union and the Treaty on the Functioning of the European Union, Denmark does not take part in the adoption by the Council of the measures pursuant to Title V of Part Three of the Treaty on the Functioning of the European Union, with the exception of “measures determining the third countries whose nationals must be in possession of a visa when crossing the external borders of the Member States, or measures relating to a uniform format for visas”. This proposal builds on the Schengen acquis, and under Article 4 of the Protocol on the position of Denmark, Denmark shall decide within a period of six months after the Council has decided on a proposal or initiative to build upon the Schengen acquis under the provisions of Title V of Part Three of the Treaty on the Functioning of the European Union whether it will implement this decision in its national law.
- (33) This Regulation constitutes a development of provisions of the Schengen acquis in which the United Kingdom does not take part, in accordance with Council Decision 2000/365/EC of 29 May 2000 concerning the request of the United Kingdom of Great Britain and Northern Ireland to take part in some of the provisions of the Schengen acquis<sup>1</sup>. The United Kingdom is therefore not taking part in its adoption and is not bound by it or subject to its application.
- (34) This Regulation constitutes a development of provisions of the Schengen acquis in which Ireland does not take part, in accordance with Council Decision 2002/192/EC of 28 February 2002 concerning Ireland's request to take part in some of the provisions of the Schengen acquis<sup>2</sup>. Ireland is therefore not taking part in its adoption and is not bound by it or subject to its application.
- (35) The Agency should facilitate the organisation of operational actions in which the Member States may avail themselves of the expertise and facilities which Ireland and the United Kingdom may be willing to offer, in accordance with modalities to be decided on a case-by-case basis by the Management Board. To that end, representatives of Ireland and the United Kingdom should be invited to attend all the meetings of the Management Board in order to allow them to participate fully in the deliberations for the preparation of such operational actions.
- (36) A controversy exists between the Kingdom of Spain and the United Kingdom on the demarcation of the borders of Gibraltar.
- (37) 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,

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<sup>1</sup> OJ L 131, 1.6.2000, p. 43.

<sup>2</sup> OJ L 64, 7.3.2002, p. 20.

HAVE ADOPTED THIS REGULATION:

Article 1  
Amendment

Regulation (EC) No 2007/2004 is amended as follows:

(1) In Article 1 paragraph 2 is replaced by the following:

"2. While considering that the responsibility for the control and surveillance of external borders lies with the Member States, the Agency, *as a body of the Union as defined in Article 15 and in accordance with Article 19 of this Regulation*, shall facilitate and render more effective the application of existing and future European Union measures relating to the management of external borders, in particular the Schengen Borders Code<sup>1</sup>. It shall do so by ensuring the coordination of Member States' actions in the implementation of those measures, thereby contributing to an efficient, high and uniform level of control on persons and surveillance of the external borders of the Member States.

*The Agency shall fulfil its tasks in full compliance with the relevant Union law, including the Charter of Fundamental Rights of the European Union, international law, including the Convention Relating to the Status of Refugees of 28 July 1951 ("the Geneva Convention"), obligations related to access to international protection, in particular the principle of non-refoulement, and fundamental rights and taking into account the reports of the Consultative Forum referred to in Article 26a."*

(1a) In Article 1 paragraph 3 is replaced by the following:

*"3. The Agency shall also provide the Commission and the Member States with the necessary technical support and expertise in the management of the external borders and promote solidarity between Member States, especially those facing specific and disproportionate pressures."*

(2) Article 1a is amended as follows:

(a) *the following point is inserted:*

*"1a. "European Border Guard Teams" means for the purpose of Article 3, Article 3b, Article 3c, Article 8 and Article 17 teams to be deployed during joint operations and pilot projects, for the purpose of Articles 8a to 8g teams to be deployed for the rapid border interventions (hereinafter referred to as "rapid interventions)" within the meaning of Regulation (EC) No 863/2007 and for the purpose of Article 2(1) (ea) and (g) and Article 5 teams to be deployed during joint operations, pilot projects and rapid interventions";*

(aa) point 2 is replaced by the following:

"2. "host Member State" means a Member State *in which* a joint operation, a pilot project *or a rapid intervention* takes place *or from which it is launched*;"

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<sup>1</sup> OJ L 105 13.4.2006, p. 1.

(b) point 4 is replaced by the following:

"4. "members of the teams" means border guards of Member States serving with the ***European Border Guard Teams*** other than those of the host Member State;"

***(c) point 5 is replaced by the following:***

***"requesting Member State" means a Member State whose competent authorities request the Agency to deploy the rapid interventions on its territory;"***

(3) Article 2 is amended as follows:

(a) paragraph 1 is amended as follows:

(i) points (c) and (d) are replaced by the following:

"(c) carry out risk analyses, including the ***assessment*** of the capacity of Member States to face threats and pressure at the external borders;

(d) participate in the development of research relevant for the control and surveillance of external borders;"

***(ia) the following point is added:***

***"(da) assist Member States in circumstances requiring increased technical and operational assistance at the external borders, taking into account that some situations may involve humanitarian emergencies and rescue at sea;"***

***(ib) point (e) is replaced by the following:***

***"(e) assist Member States in circumstances requiring increased technical and operational assistance at external borders, especially those Member States facing specific and disproportionate pressures;"***

***(ic) the following point is inserted:***

***"(ea) set up European Border Guard Teams that are to be deployed during joint operations, pilot projects and rapid interventions;"***

(ii) point (f) is replaced by the following:

"(f) provide Member States with the necessary support, including, upon request, coordination ***or organisation*** of joint return operations;"

***(iia) point (g) is replaced by the following:***

***" (g) deploy border guards from the European Border Guard Teams to Member States in joint operations, pilot projects or in rapid interventions in accordance with Regulation (EC) No 863/2007.***

(iii) the following points (h) and (i) are added:

- "(h) develop and operate *in accordance with Regulation (EC) No 45/2001* information systems that enable swift and reliable exchanges of information regarding emerging risks at the external borders, including the Information and Coordination Network established by Council Decision 2005/267/EC<sup>1</sup>;
- (i) provide the necessary assistance to the development and operation of a European border surveillance system and, as appropriate, to the development of a common information sharing environment, including interoperability of systems.

(b) the following paragraph 1b is inserted:

***(ba) "1b. In accordance with Union and international law, no person shall be disembarked in, or otherwise handed over to the authorities of, a country in contravention of the principle of non-refoulement, or from which there is a risk of expulsion or return to another country in contravention of that principle. The special needs of children, victims of trafficking, persons in need of medical assistance, persons in need of international protection and other vulnerable persons shall be addressed in accordance with Union and international law."***

(c) in paragraph 2 the last subparagraph is replaced by the following:

"Member States shall report to the Agency on these operational matters at the external borders outside the framework of the Agency. The Executive Director shall inform the Management Board on these matters on a regular basis and at least once a year."

***(3a) The following article is inserted:***

***"Article 2a***

***Code of Conduct***

***The Agency shall draw up and further develop a Code of Conduct applicable to all operations coordinated by the Agency. The Code of Conduct shall lay down procedures intended to guarantee the principles of the rule of law and the respect of fundamental rights with particular focus on unaccompanied minors and vulnerable persons, as well as persons seeking international protection, applicable to all persons participating in Frontex activities.***

***The Code of Conduct shall be developed in cooperation with the consultative forum referred to in Article 26a."***

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<sup>1</sup> OJ L 83, 1.4.2005, p. 48.

(4) Article 3 is replaced by the following:

"Article 3

Joint operations and pilot projects at the external borders

1. The Agency shall evaluate, approve and coordinate proposals for joint operations and pilot projects made by Member States, including the requests of Member States related to circumstances requiring increased technical and operational assistance, *especially in cases of specific and disproportionate pressures*.

The Agency may itself initiate *and carry out* joint operations and pilot projects in cooperation with *the* Member States *concerned and in agreement with the host Member States*.

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

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

1a. The Agency may also terminate, *after informing the Member State concerned*, joint operations and pilot projects if the conditions to conduct these initiatives are no longer fulfilled.

*Participating Member States may request the Agency to terminate a joint operation or pilot project.*

*The home Member State shall provide for appropriate disciplinary or other measures in accordance with their law in case of violations of fundamental rights or international protection obligations in the course of such activities.*

*The Executive Director of the Agency shall suspend or terminate, in whole or in part, joint operations and pilot projects if it considers that violations concerned are of a serious nature or are likely to persist.*

2. The Agency shall constitute a pool of border guards called *European Border Guard Teams* in accordance with the provisions of Article 3b, for possible deployment during joint operations and pilot projects referred to in paragraph 1. It shall decide on the deployment of human resources and technical equipment in accordance with Articles 3a and 7.

3. The Agency may operate through its specialised branches provided for in Article 16 for the practical organisation of joint operations and pilot projects.

4. The Agency shall evaluate the results of the joint operations and pilot projects and transmit the detailed evaluation reports within 60 days following the end of the activity to the Management Board, *together with the observations of the Fundamental Rights Officer referred to in Article 26a*. The Agency shall make a comprehensive comparative analysis of those results with a view to enhancing the quality, coherence and effectiveness of future operations and projects to be included in its general report provided for in Article 20(2)(b).

5. The Agency *shall* finance or co-finance the joint operations and pilot projects referred to in paragraph 1, with grants from its budget in accordance with the financial rules applicable to the Agency."

**5a. Paragraphs 1a and 5 shall apply to rapid interventions.**

(5) The following Articles 3a, 3b and 3c are inserted:

"Article 3a

Organisational aspects of joint operations and pilot projects

1. The Executive Director shall draw up an operational plan for activities referred to in Article 3(1). The Executive Director and the host Member State, *in consultation with participating Member States*, shall agree on the operational plan detailing the organisational aspects in due time before the envisaged beginning of the activity.

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

- (a) a description of the situation, with modus operandi and objectives of the deployment, including the operational aim;
- (b) the foreseeable duration of the joint operation or pilot projects;
- (c) the geographical area where the joint operation or pilot project will take place;
- (d) description of the tasks and special instructions for the guest officers, including on permissible consultation of databases and permissible service weapons, ammunition and equipment in the host Member State;
- (e) the composition of the teams of guest officers, *as well as the deployment of other relevant staff*;
- (f) command and control provisions, including the names and ranks of the host Member State's border guards responsible for cooperating with the guest officers and the Agency, in particular those of the border guards who are in command during the period of deployment, and the place of the guest officers in the chain of command;
- (g) the technical equipment to be deployed during the joint operation or pilot project, including specific requirements such as conditions for use, requested crew, transport and other logistics, and financial provisions;
- (h1) *detailed provisions on immediate incident reporting by the Agency to the Management Board and to relevant national public authorities*;
- (h2) a reporting and evaluation scheme containing benchmarks for the evaluation report and final date of submission of the final evaluation report in accordance with Article 3(4).

- (i) regarding sea operations, specific **information on the application of the relevant jurisdiction and legislation in** the geographical area where the joint operation takes place, **including reference to international and Union law regarding interception, rescue at sea and disembarkation;**
- (j) **modalities of cooperation with third countries, other European Union agencies and bodies or international organisations.**

2. Any amendments to or adaptations of the operational plan shall require the agreement of the Executive Director and the host Member State. A copy of the amended or adapted operational plan shall immediately be sent by the Agency to the participating Member States.

3. The Agency shall, as part of its coordinating tasks, ensure the operational implementation of all the organisational aspects, including the presence of a staff member of the Agency **during** joint operations and pilot projects referred to in this Article.

#### Article 3b

#### Composition and deployment of **European Border Guard Teams**

1. On a proposal by the Executive Director, the Management Board shall decide by an absolute majority of its members with a right to vote on the profiles and the overall number of border guards to be made available for the **European Border Guard Teams**. The same procedure shall apply with regard to any subsequent changes in the profiles and the overall numbers. Member States shall contribute to the **European Border Guard Teams** via a national pool on the basis of the various defined profiles by nominating border guards corresponding to the required profiles.

2. **The contribution by Member States as regards their border guards to specific operations for the coming year shall be planned on the basis of annual bilateral negotiations and agreements between the Agency and Member States. In accordance with these agreements,** Member States shall make the border guards available for deployment at the request of the Agency, unless they are faced with an exceptional situation substantially affecting the discharge of national tasks. Such a request shall be made at least **45** days before the intended deployment. The autonomy of the home Member State in relation to the selection of staff and the duration of their deployment shall remain unaffected.

3. The Agency shall also contribute to the **European Border Guard Teams** with competent border guards seconded by the Member States as national experts pursuant to Article 17(5). **The contribution by Member States as regards seconding their border guards to the Agency for the coming year shall be planned on the basis of annual bilateral negotiations and agreements between the Agency and Member States.**

**In accordance with these agreements, Member States shall make the border guards available for secondment, unless this would seriously affect the discharge of national tasks. In such situations Member States may recall their seconded border guards.**

The maximum duration of such secondments shall not exceed six months in a twelve month period. They shall, for the purpose of this Regulation, be considered as guest officers and have the tasks and powers referred to in Article 10. The Member State having seconded the border guards in question shall be considered as "home Member State" as defined in Article 1a(3) for the purpose of applying Articles 3c, 10, and 10b. Other staff employed by the Agency on a temporary basis who are not qualified to perform border control functions shall only be deployed during joint operations and pilot projects for coordination tasks.

4. Members of the *European Border Guard 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. 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 grounds of sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation.

5. In accordance with Article 8g the Agency will nominate a coordinating officer for each joint operation or pilot project where members *of the European Border Guard Teams* will be deployed.

*The role of the coordinating officer shall be to foster cooperation and coordination amongst host and participating Member States.*

6. The Agency shall meet the costs incurred by the Member States in making their border guards available pursuant to paragraph 1 for the *European Border Guard Teams* in accordance with Article 8h.

*6a. The Agency shall inform the EP on an annual basis on the number of border guards that each Member State has committed to the European Border Guard Teams in accordance with this Article.*

Article 3c

Instructions to the *European Border Guard Teams*

1. During deployment of *European Border Guard Teams* instructions to the teams shall be issued by the host Member State in accordance with the operational plan referred to in Article 3a (1).

2. The Agency, via its coordinating officer as referred to in Article 3b (5), may communicate its views on those instructions to the host Member State. If it does so, the host Member State shall take those views into consideration.

3. In accordance with Article 8g the host Member State shall give the coordinating officer all necessary assistance, including full access to the *European Border Guard Teams* at all times throughout the deployment.

4. Members of the *European Border Guard Teams* shall, while performing their tasks and exercising their powers, remain subject to the disciplinary measures of their home Member State."

(6) Article 4 is replaced by the following:

"Article 4

Risk analysis

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

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

***For the purpose of risk analysis, the Agency may assess, after prior consultation with the Member State(s) concerned, their capacity to face upcoming challenges, including present and future threats and pressures at the external borders of the European Union, especially for those Member States facing specific and disproportionate pressures. To this end the Agency may assess the equipment and the resources of the Member States regarding border control. The assessment shall be based on information given by the Member State(s) concerned, and on the reports and results of joint operations, pilot projects, rapid interventions and other activities of the Agency. These assessments are without prejudice to the Schengen Evaluation Mechanism.***

The results of these *assessments* shall be presented to the Management Board of the Agency.

***For these purposes Member States shall provide the Agency with all necessary information regarding the situation and possible threats at the external borders.***

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

(7) Article 5 is amended as follows:

(a) *the following paragraphs are inserted before the first paragraph:*

***"The Agency shall provide border guards who are part of the European Border Guard Teams with advanced training relevant to their tasks and powers and shall conduct regular exercises with those border guards in accordance with the advanced training and exercise schedule referred to in the Agency's annual work programme.***

***The Agency shall also take the necessary initiatives to ensure that all border guards and other personnel of the Member States who participate in the European Border Guard Teams, as well as the staff of the Agency, shall, prior to their participation in operational activities organised by the Agency, have received training in relevant Union and international law, including fundamental rights and access to international protection and guidelines for the purpose of identifying persons seeking protection and directing them towards the appropriate facilities.***

(b) the first paragraph is replaced by the following:

"The Agency shall establish and further develop common core curricula for border guards' training and provide training at European level for instructors of the national border guards of Member States, including with regard to fundamental rights and access to international protection *and relevant maritime law*."

*Training curricula shall be drawn up after consultation of the Consultative Forum referred to in Article 26a.*

Member States shall integrate the common core curricula in the training of their national border guards."

(c) *the following paragraph is inserted after the last paragraph:*

*"The Agency shall establish an exchange programme enabling national border guards participating in the European Border Guard Teams to acquire knowledge or specific know-how from experiences and good practices abroad by working with border guards in a Member State other than their own."*

(8) Articles 6 and 7 are replaced by the following:

"Article 6

Monitor and contribute to research

The Agency shall *proactively* monitor and contribute to the developments in research relevant for the control and surveillance of the external borders and disseminate this information to the Commission and the Member States.

Article 7

Technical equipment

1. The Agency may acquire, *itself or in co-ownership with a Member State*, or lease technical equipment for external border control to be deployed during joint operations, pilot projects, *rapid interventions*, return operations or technical assistance projects in accordance with the financial rules applicable to the Agency. Any acquisition *or leasing* of equipment entailing significant costs to the Agency shall be preceded by a thorough needs and cost/benefit analysis. *Any such expenditure shall be provided for in the Agency's budget as adopted by the Management Board in accordance with Article 29(9)*. In case the Agency acquires or leases important technical equipment, such as open sea and coastal patrol vessels or vehicles, to be used in joint operations, the following provisions shall apply:

–in case of acquisition *and co-ownership*, the Agency agrees formally with one Member State that the latter will provide for the registration of the equipment *in accordance with the applicable legislation of that Member State*;

–in case of leasing, the equipment must be registered in a Member State.

***Based on a model agreement drawn up by the Agency, the Member State of registration and the Agency shall agree on modalities ensuring the periods of full availability of the co-owned assets for the Agency, as well as on the terms of use of the equipment.***

The Member State of registration or the supplier of technical equipment shall provide the necessary experts and technical crew to operate the technical equipment in a legally sound and safe manner.

2. The Agency shall set up and keep centralised records of equipment in a technical equipment pool composed of equipment owned *either* by the Member States or by the Agency ***and equipment co-owned by the Member States and the Agency*** for external border control purposes. The technical equipment pool shall contain a minimum number per type of technical equipment defined in accordance with paragraph 5 of this article. The equipment listed in the technical equipment pool shall be deployed during the activities referred to in Articles 3, 8a and 9.
3. Member States shall contribute to the technical equipment pool referred to in paragraph 2. ***The contribution by Member States to the pool and deployment of the technical equipment for specific operations shall be planned on the basis of annual bilateral negotiations and agreements between the Agency and Member States. In accordance with these agreements and*** to the extent that it forms part of the minimum number of equipment for a given year, Member States shall make their technical equipment available for deployment at the request of the Agency, unless they are faced with an exceptional situation substantially affecting the discharge of national tasks. ***Such requests shall be made at least 45 days before the intended deployment. The*** contributions to the technical equipment pool shall be reviewed annually.
4. The Agency shall manage the records of the technical equipment pool as follows:
  - (a) classification by type of equipment and by type of operation;
  - (b) classification by owner (Member State, Agency, others);
  - (c) overall numbers of required equipment;
  - (d) crew requirements if applicable;
  - (e) other information such as registration details, transportation and maintenance requirements, national applicable export regimes, technical instructions, or other relevant information to handle the equipment correctly.
5. The Agency shall finance the deployment of the equipment which forms part of the minimum number of equipment provided by a given Member State for a given year. The deployment of equipment which does not form part of the minimum number of equipment shall be co-financed by the Agency up to a maximum of ***100%*** of the eligible expenses ***taking into account the particular circumstances of the Member States deploying such equipment.***

The rules including the required overall minimum numbers per type of equipment, the conditions for deployment and reimbursement of costs shall be decided in accordance with Article 24 on a yearly basis by the Management Board on a proposal by the Executive Director. For budgetary purposes this decision should be taken by the Management Board by 31 March.

The minimum number of equipment shall be proposed by the Agency in accordance with its needs, notably be able to carry out joint operations, pilot projects, *rapid interventions* and return operations, in accordance with the work programme of the Agency for the year in question.

***If the minimum number of equipment proves to be insufficient to carry out the operational plan agreed for joint operations, pilot projects, rapid interventions or return operations, it shall be revised by the Agency on the basis of justified needs and of an agreement between the Agency and the Member States.***

6. The Agency shall report on the composition and the deployment of equipment which is part of the technical equipment pool to the Management Board on a monthly basis. In case the minimum number of equipment referred to in paragraph 5 is not reached, the Executive Director shall inform the Management Board without delay. The Management Board shall take a decision on the prioritisation of the deployment of the technical equipment urgently and take the appropriate steps to remedy the identified shortcomings. It shall inform the Commission of the identified shortcomings and the steps taken. The Commission *shall* subsequently inform the European Parliament and the Council, together with its own assessment.

***6a. The Agency shall inform the EP on an annual basis on the number of technical equipment that each Member State has committed to the pool in accordance with this Article."***

(9) Article 8 is *amended as follows*:

(a) *paragraph 1 is replaced by the following*:

***"1. Without prejudice to Article 78(3) of the Treaty on the Functioning of the European Union, one or more Member States facing specific and disproportionate pressures and confronted with circumstances requiring increased technical and operational assistance when implementing their obligations with regard to control and surveillance of external borders may request the Agency for assistance. The Agency shall in accordance with Article 3 organise the appropriate technical and operational assistance for the requesting Member State(s).***

(b) *in paragraph 2 the following point is added*:

***"(ba) deploy border guards from the European Border Guard Teams."***

(9a) *Article 8, paragraph 3 reads as follows*:

***3. The Agency may acquire technical equipment for checks and surveillance of external borders to be used by its experts and within the framework of the rapid interventions for their duration.***

(9b) Article 8a is replaced by the following:

"8a

**Rapid Interventions**

*At the request of a Member State faced with a situation of urgent and exceptional pressure, 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 illegally, the Agency may deploy for a limited period one or more European Border Guard Teams (hereinafter referred to as "team(s)") on the territory of the requesting Member State for the appropriate duration in accordance with Article 4 of Regulation (EC) No 863/2007."*

(9c) In Article 8d, paragraph 5 is replaced by the following:

*"5. If the Executive Director decides to deploy one or more teams, an operational plan shall immediately, and in any event no later than 5 working days of the date of the decision, be drawn up by the Agency and the requesting Member State in accordance with Article 8e."*

(10) In Article 8e, paragraph 1 is amended as follows:

(a) points (f) and (g) are replaced by the following:

"(f) command and control provisions, including the names and ranks of the host Member State's border guards responsible for cooperating with the *teams*, in particular those of the border guards who are in command of the teams during the period of deployment, and the place of the teams in the chain of command;

(g) the technical equipment to be deployed together with the teams, including specific requirements such as conditions for use, requested crew, transport and other logistics, and financial provisions."

(b) the following points (**h1**), (**h2**), (i) and (j) shall be added:

**"(h1) detailed provisions on immediate incident reporting by the Agency to the Management Board and to relevant national public authorities;**

**(h2)** a reporting and evaluation scheme containing benchmarks for the evaluation report and final date of submission of the final evaluation report in accordance with Article 3(4).

(i) regarding sea operations, **information on the application of the relevant jurisdiction and legislation in** the geographical area where the joint operation takes place **including references to international and Union law regarding interception, rescue at sea and disembarkation;**

(j) **modalities of cooperation with third countries, other European Union agencies and bodies or international organisations."**

(11) In Article 8h paragraph 1, *first subparagraph*, is replaced by the following:

"1. The Agency shall fully meet the following costs incurred by Member States in making available their border guards for the purposes mentioned in Article 3(2), Article 8a and Article 8c:"

(12) Article 9 is replaced by the following:

"Article 9

Return cooperation

1. Subject to the return policy of the Union, and in particular Directive 2008/115/EC<sup>1</sup> *and without entering into the merits of return decisions*, the Agency shall provide the necessary assistance, and upon request of the participating Member States ensure the coordination *or the organisation of* joint return operations of Member States, *including through the chartering of aircraft for the purpose of such operations*. The Agency *shall* finance or co-finance the operations and projects referred to in this paragraph, with grants from its budget in accordance with the financial rules applicable to the Agency. The Agency may also use financial means *of the European Union* available in the field of return. The Agency shall ensure that in its grant agreements with Member States any financial support is conditional upon the full respect of the Charter of Fundamental Rights.

2. The Agency shall develop a Code of Conduct for the return of illegally present third-country nationals which shall apply during all joint return operations coordinated by the Agency, describing common standardized procedures which should simplify the organisation of joint return *operations* and assure return in a humane manner and in full respect for fundamental rights, in particular the principles of human dignity, prohibition of torture and of inhuman or degrading treatment or punishment, right to liberty and security, the rights to the protection of personal data and non discrimination.

3. The Code of Conduct will in particular pay attention to the obligation set out in Article 8(6) of Directive 2008/115/EC to provide for an effective forced-return monitoring system *and to the Fundamental Rights strategy referred to in Article 26a(1)*. The monitoring of joint return operations should be carried out *on the basis of objective and transparent criteria* and should cover the whole joint return operation from the pre-departure phase until the hand-over of the returnees in the country of return.

4. Member States shall *regularly* inform the Agency *of their needs for* the assistance or coordination *by* the Agency. The Agency shall draw up a rolling operational plan to provide the requesting Member States with the necessary operational support, including technical equipment referred to in Article 7(1). The Management Board shall decide in accordance with Article 24 on a proposal of the Executive Director, on the content and modus operandi of the rolling operational plan.

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<sup>1</sup> OJ L 348, 24.12. 2008, p. 98.

5. The Agency shall cooperate with competent authorities of the relevant third countries referred to in Article 14, identify best practices on the acquisition of travel documents and the return of illegally present third-country nationals.

(13) In Article 10, paragraph 2 is replaced by the following:

"2. While performing their tasks and exercising their powers guest officers shall comply with Union *and international* law, in accordance with fundamental rights, and the national law of the host Member State."

(14) Article 11 is replaced by the following:

"Article 11

Information exchange systems

The Agency may take all necessary measures to facilitate the exchange of information relevant for its tasks with the Commission and the Member States, *and, where appropriate, the European Agencies referred to in Article 13*. It shall develop and operate an information system capable of exchanging classified information with *these actors, including personal data referred to in Articles 11a, 11b and 11c*.

*The Agency may take all necessary measures to facilitate the exchange of information relevant for its tasks with United Kingdom and Ireland if it relates to the activities in which they participate in accordance with Articles 12 and 20(5).*"

(15) The following Articles are inserted:

"Article 11a

Data protection

***Regulation (EC) No 45/2001 shall apply to the processing of personal data by the Agency.***

The Management Board shall establish measures for the application of Regulation (EC) No 45/2001 by the Agency, including those concerning the Data Protection Officer of the Agency. ***These measures shall be established after the consultation of the European Data Protection Supervisor. Without prejudice to Articles 11b and 11c, the Agency may process personal data for administrative purposes.***

## **Article 11b**

### ***Processing of personal data in the context of joint return operations***

***In accordance with the measures referred to in the second paragraph of Article 11a:***

- 1. In performing its task of the organization and coordination of joint return operations of Member States referred to in Article 9, the Agency may process personal data of persons who are subject to such joint return operations.***
- 2. The processing of such personal data shall respect the principles of necessity and proportionality. In particular, it shall be strictly limited to those personal data which are required for the purposes of the joint return operation.***
- 3. The personal data shall be deleted as soon as the purpose for which they have been collected has been achieved and no later than 10 days after the joint return operation.***
- 4. In case the personal data are not transferred to the carrier by a Member State, the Agency may transfer such data.***

## **Article 11c**

### ***Processing of personal data collected during joint operations, pilot projects and rapid interventions***

***In accordance with the measures referred to in Article 11a:***

- 1. Without prejudice to the competence of Member States to collect personal data in the context of joint operations, pilot projects and rapid interventions and subject to the limitations set out in paragraphs 2 and 3, the Agency may further process personal data collected by the Member States during such operational activities and transmitted to the Agency in order to contribute to the security of the external borders of the Member States of the European Union.***
- 2. Such further processing of personal data by the Agency shall be limited to personal data regarding persons who are suspected, by the relevant authorities of Member States, on reasonable grounds of involvement in cross-border criminal activities, in facilitation of illegal migration activities or in human trafficking activities as defined in Article 1(1)(a) and (b) of Council Directive 2002/90/EC<sup>1</sup>.***
- 3. Personal data referred to in paragraph 2 shall be further processed by the Agency only for the following purposes:***
  - (a) Transmission, on a case by case basis, to Europol or other EU law enforcement agencies, subject to Article 13 of this Regulation.***
  - (b) Use for the preparation of risk analyses referred to in Article 4. In the result of the risk-analyses data shall be depersonalized.***

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<sup>1</sup> OJ L 328, 5.12.2002, p. 17.

**4. The personal data shall be deleted as soon as they have been transmitted to Europol or other European Agencies or used for the preparation of risk analyses referred to in Article 4. The term of storage shall in any event not exceed three months after the date of the collection of those data.**

**5. The processing of such personal data shall respect the principles of necessity and proportionality. The personal data shall not be used by Frontex for the purpose of investigations, which remain under the responsibility of the competent national authorities.**

***In particular, it shall be strictly limited to those personal data which are required for the purposes referred to in paragraph 3.***

**6. Without prejudice to Regulation (EC) No 1049/2001, onward transmission or other communication of such personal data processed by the Agency to third countries or other third parties is prohibited.**

*Article 11d*

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

1. The Agency shall apply the Commission's rules on security as set out in the Annex to Commission Decision 2001/844/EC, ECSC, Euratom<sup>1</sup>. This shall cover, inter alia, provisions for the exchange, processing and storage of classified information.

2. The Agency shall apply the security principles relating to the processing of non-classified sensitive information as adopted and implemented by the European Commission. ***The Management Board shall establish measures for the application of these security principles.***

"Article 13

Cooperation with European Union agencies and bodies and international organisations

The Agency may cooperate with Europol, the European Asylum Support Office, the Fundamental Rights Agency, other European Union agencies and bodies, and the international organisations competent in matters covered by this Regulation in the framework of working arrangements concluded with those bodies, in accordance with the relevant provisions of the Treaty and the provisions on the competence of those bodies. ***In every case the Agency shall inform the European Parliament of any such arrangements.***

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<sup>1</sup> OJ L 317, 3.12.2001, p. 1."

***Onward transmission or other communication of personal data processed by the Agency to other European Union agencies or bodies shall be subject to specific working arrangements regarding the exchange of personal data and subject to the prior approval of the European Data Protection Supervisor.***

***The Agency may also, with the agreement of the Member State(s) concerned, invite observers of European Union agencies and bodies or international organisations to participate in its activities referred to in Articles 3, 4 and 5, to the extent that their presence is in accordance with the objectives of these activities, may contribute to the improvement of cooperation and the exchange of best practices, and does not affect the overall safety of the activities. The participation of those observers may take place only with the agreement of the Member States concerned regarding the activities referred to in Articles 4 and 5 and only with the agreement of the host Member State regarding those referred to in Article 3. Detailed rules on the participation of observers shall be included in the operational plan referred to in Article 3a(1). These observers shall receive the appropriate training from the Agency prior to their participation.***

#### Article 14

Facilitation of operational cooperation with third countries and cooperation with competent authorities of third countries

1. In matters covered by its activities and to the extent required for the fulfilment of its tasks, the Agency shall facilitate the operational cooperation between Member States and third countries, in the framework of the European Union external relations policy, including with regard to human rights.

***The Agency and the Member States shall comply with the norms and standards at least equivalent to those set by the EU legislation also when cooperation with third countries takes place on the territory of those countries.***

***The establishment of cooperation with third countries shall serve to promote European border management standards, also covering respect for fundamental rights and human dignity.***

2. The Agency may cooperate with the authorities of third countries competent in matters covered by this Regulation in the framework of working arrangements concluded with these authorities, in accordance with the relevant provisions of the Treaty. ***Those working arrangements shall be purely related to the management of operational cooperation.***

3. The Agency may deploy *its* liaison officers, which should enjoy the highest possible protection to carry out their duties, in third countries. They shall form part of the local or regional cooperation networks of Member States' *immigration* liaison officers set up pursuant to Council Regulation No 377/2004<sup>1</sup>: Liaison officers shall only be deployed to third countries in which border management practices respect minimum human rights standards. ***Their deployment shall be approved by the Management Board. Within the framework of the European Union external relations policy***, priority for deployment should be given to those third countries, which on the basis of risk analysis constitute a country of origin or transit regarding illegal migration. On a reciprocal basis the Agency may receive liaison officers posted by those third countries also, for a limited period of time. The Management Board shall adopt, on a proposal of the Executive Director, the list of priorities on a yearly basis in accordance with the provisions of Article 24.

4. The tasks of the *Agency's* liaison officers shall include, in compliance with European Union law and in accordance with fundamental rights, the establishment and maintaining of contacts with the competent authorities of the third country to which they are assigned to with a view to contribute to the prevention of and fight against illegal immigration and the return of illegal migrants.

5. The Agency may benefit from Union funding in accordance with the provisions of the relevant instruments supporting the Union's external relations policy. It may launch and finance technical assistance projects in third countries regarding matters covered by this Regulation.

***6. The Agency may also with the agreement of the Member State(s) concerned invite observers of third countries to participate in its activities referred to in Articles 3, 4 and 5, to the extent that their presence is in accordance with the objectives of these activities, may contribute to the improvement of cooperation and the exchange of best practices, and does not affect the overall safety of the activities. The participation of those observers may take place only with the agreement of the Member States concerned regarding the activities referred to in Articles 4 and 5 and only with the agreement of the host Member State regarding those referred to in Article 3. Detailed rules on the participation of observers shall be included in the operational plan referred to in Article 3a(1). These observers shall receive the appropriate training from the Agency prior to their participation.***

7. When concluding bilateral agreements with third countries as referred to in Article 2(2) Member States *may* include provisions concerning the role and competencies of the Agency, in particular regarding the exercise of executive powers by members of the teams deployed by the Agency during the activities referred to in Article 3.

8. The activities referred to in paragraphs 2 and 3 shall be subject to receiving a prior opinion of the Commission, ***and the European Parliament shall be fully informed as soon as possible.***

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<sup>1</sup> OJ L 64, 2.3.2004, p.1.

(16a) In Article 15, paragraph 1 is replaced by the following:

*"The Agency shall be a body of the Union. It shall have legal personality."*

(17) The following Article 15a is inserted:

"Article 15a

Headquarters Agreement

The necessary arrangements concerning the accommodation to be provided for the Agency in the Member State in which the Agency has its seat and the facilities to be made available by that State, as well as the specific rules applicable to the Executive Director, the Deputy Executive Director, the members of the Management Board, the staff of the Agency and members of their families, in that State shall be laid down in a Headquarters Agreement between the Agency and the Member State in which the Agency has its seat. The Headquarters Agreement shall be concluded after obtaining the approval of the Management Board. The Member State in which the Agency has its seat should provide the best possible conditions to ensure proper functioning of the Agency, including multilingual, European-oriented schooling and appropriate transport connections."

(18) In Article 17, paragraph 3 is replaced by the following:

"3. For the purpose of implementing Article 3b(5) only an Agency's staff member subject to the Staff Regulations of Officials and to Title II of the Conditions of employment of other servants of the European Communities employed by the Agency can be designated as coordinating officer in accordance with Article 8g. For the purpose of implementing Article **3b(3)** only national experts seconded by a Member State to the Agency can be designated to be attached to the *European Border Guard Teams*. The Agency shall designate those national experts that shall be attached to the *European Border Guard Teams* in accordance with that Article."

(19) In Article 17 the following paragraphs 4 and 5 are added:

"4. The Management Board shall adopt the necessary implementing measures in agreement with the Commission pursuant to the arrangements provided for in Article 110 of the Staff Regulations of Officials of the Union.

5. The Management Board may adopt provisions to allow national experts from Member States to be seconded to the Agency. Those provisions shall take into account the requirements of Article 3b(2), in particular the fact that they are considered as guest officers and have the tasks and powers referred to in Article 10. *They shall include provisions on the conditions of deployment.*"

(20) Article 20 is amended as follows:

(a) Paragraph 2 is amended as follows:

(i) point (h) is replaced by the following:

"(h) establish the organisational structure of the Agency and adopt the Agency's staff policy, in particular the multi-annual staff policy plan. In accordance with the relevant provisions of the framework Financial Regulation for the bodies referred to in Article 185 of *Council Regulation (EC, Euratom) No 1605/2002 the multi-annual staff policy plan shall be submitted* to the Commission and the budgetary authority after receiving a favourable opinion of the Commission;"

(ii) the following point (i) is inserted:

"(i) adopt the Agency's Multi Annual Plan aiming at outlining the future long term strategy regarding the activities of the Agency."

(b) Paragraph 4 is replaced by the following:

"4. The Management Board may advise the Executive Director on any matter strictly related to the development of operational management of the external borders, including activities related to research as defined in Article 6."

(21) Article 21 is amended as follows:

(a) in paragraph 1 the last sentence is replaced by the following:

"This term of office shall be extendable."

(b) paragraph 3 is replaced by the following:

"3. Countries associated with the implementation, application and development of the Schengen acquis shall participate in the Agency. They shall have one representative and an alternate each in the Management Board. Under the relevant provisions of their association agreements, arrangements have been developed that specify the nature and extent of, and the detailed rules for, the participation by these countries in the work of the Agency, including provisions on financial contributions and staff."

**(21a) In Article 25, paragraph 2 is replaced by the following:**

**"2. The European Parliament or the Council may invite the Executive Director of the Agency to report on the carrying out of his/her tasks, in particular on the implementation and monitoring of the Fundamental Rights Strategy, the general report of the Agency for the previous year, the work programme for the coming year and the Agency's multi-annual plan referred to in Article 20(i)."**

(22) In Article 25(3) the following point (g) shall be added:

"(g) *Ensure the implementation of the operational plan referred to in Articles 3a and 8g.*"

(22a) *The following Article is inserted:*

*"Article 26a*

*Fundamental Rights Strategy*

*1. The Agency shall draw up and further develop and implement its Fundamental Rights Strategy. The Agency shall put in place an effective mechanism to monitor the respect for fundamental rights in all the activities of the Agency.*

*2. A Consultative Forum shall be established by the Agency to assist the Director and the Management Board in fundamental rights matters. The Agency shall invite the European Asylum Support Office, the Fundamental Rights Agency, the United Nations High Commissioner for Refugees and other relevant organisation to participate in the Consultative Forum. On the proposal of the Executive Director, the Management Board shall decide on the composition and the working methods of and the modalities of the transmission of information to the Consultative Forum.*

*The Consultative Forum shall be consulted on the further development and implementation of the Fundamental Rights Strategy, Code of conduct and Common Core Curriculum.*

*The Consultative Forum shall prepare an annual report of its activities. Those reports shall be made publically available.*

*3. A Fundamental Rights Officer shall be designated by the Management Board of the Agency. He/she shall have the necessary qualifications and experience in the field of fundamental rights. He/she shall be independent in the performance of his/her duties as a Fundamental Rights Officer and shall report directly to the Management Board and the Consultative Forum. He/she shall report on a regular basis and as such contribute to the mechanism for monitoring fundamental rights.*

*4. The Fundamental Rights Officer and the Consultative Forum shall have access to all information concerning respect for fundamental rights, in relation to all the activities of the Agency."*

(23) In Article 33, the following paragraphs 2a and 2b are inserted:

*"2a. The next evaluation shall also analyse the needs for further increased coordination of the management of the external borders of the Member States, including the feasibility of the creation of a European system of border guards."*

*2b. The evaluation shall include a specific analysis on the way the Charter of Fundamental Rights was respected pursuant to the application of the Regulation."*

Article 2  
Entry into force

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

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

Done at ...,

*For the European Parliament*  
*The President*

*For the Council*  
*The President*

**Council Declaration**

The Council welcomes the full support the United Kingdom is giving to the development of the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union, as well as the United Kingdom's willingness to participate in Frontex operational activities pursuant to Regulation (EC) 2007/2004. The Council invites Member States to form bilateral arrangements with the UK that deliver to UK border guards supporting Frontex joint operations and other operational activities as special advisers, equivalent protections to the guest officers of the Member States in relation to civil and criminal liability.

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